CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

January 3, 2013 Meeting Agenda Item 4

SUBJECT: Plaza Corona del Mar (PA2010-061)

SITE

LOCATION: 3900 and 3928 East Coast Highway

Conditional Use Permit No. UP2012-011
 Modification Permit No. MD2012-011
 Site Development Review No. SD2012-001

Tentative Tract Map No. NT2012-001

Variance No. VA2012-002

APPLICANT: Marcelo E. Lische, Architect AIA

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PROJECT SUMMARY

The applicant is proposing to construct a horizontal mixed-use development that includes six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space, ground level parking lot. Requested applications include a site development review, a conditional use permit, a modification permit, a tentative tract map, and a variance.

The project was continued from the December 6, 2012, Planning Commission meeting to allow staff to re-notice the public hearing to include a potential waiver of one guest parking space for the residential component of the project and to include additional analysis related to the architectural design and construction of the project. This staff report supplements the December 6, 2012, Planning Commission staff report with the additional information requested by the Commission.

RECOMMENDED ACTION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Site Development Review No. SD2012-001, Tentative Tract Map No. NT2012-001, and Variance No. VA2012-007, (Attachment No. PC 1). This resolution does not include a waiver of the guest residential parking space, but rather maintains one van accessible parking space within the ground level parking lot for the exclusive use of guests of the residential component.

Additional conditions have also been included to address the shared parking configuration.

DISCUSSION

December 6, 2012, Planning Commission Meeting

The Planning Commission reviewed the project application on December 6, 2012, and voted to continue the project to January 3, 2013, to allow staff to re-notice the project to include a waiver of one guest parking space for the residential component of the project. The Planning Commission also requested additional information related to the architectural design and construction of the project. The Planning Commission minutes are included as Attachment No. PC 4. Public comment letters received prior to the meeting are included as Attachment No. PC 5.

Generally, the Planning Commission expressed the following concerns:

- The shared 10-space parking lot and trash enclosure have potential to create conflict between the residential and commercial users. The Commission ultimately requested staff return with a draft resolution that would consider a waiver of one residential guest parking space and limit the shared use of the parking lot (provided as Attachment No. PC 2).
- Requested additional details regarding the architectural style and material finishes of the proposed project to ensure quality design and compatibility with surrounding development.
- Questioned the need to maintain the existing Gallo's building under the proposed commercial office addition, rather than construct an entirely new building.

The following analysis responds to each of the Commission's concerns and includes additional information that was not available at the December 6, 2012, meeting.

Analysis

Waiver of Residential Guest Parking Space

The six-unit condominium development is required per the Zoning Code to provide three guest parking spaces. Two of the required guest spaces are proposed within the subterranean residential parking structure; the other required guest space is proposed within the adjacent 10-space shared ground level parking lot. As originally proposed, the spaces within the ground level parking lot were not signed or restricted to any one use.

To eliminate concerns with potential parking conflicts between residential and commercial users within the ground level parking lot, the Planning Commission discussed waiving one of the three required residential guest parking spaces for the six-

unit condominium development and restricting the full use of the parking lot for commercial users. The loss of this one guest parking space would be off-set by the fact that five on-street parking spaces would be maintained on East Coast Highway fronting the development, three of which would be newly created spaces.

Pursuant to the California Building Code, one required residential guest parking space must be van accessible for persons with disabilities. Additionally, an accessible path of travel to each of the residential units must be provided. This space is currently identified as Space No. 5 within the shared parking lot on the proposed plans. This accessible parking space cannot be waived as the project is currently designed. However, the Commission may consider the following alternatives:

- 1. <u>Current Design, No Waiver</u>: Approve the parking configuration as originally proposed. The accessible parking space shall be signed for the exclusive use for guests of the residential condominium development at all times. With regard to use of the remaining nine spaces, the Commission has the option of reserving the spaces for the exclusive use of the commercial users or allowing for a shared parking configuration during evening hours. Additional discussion pertaining to the shared use of parking lot is provided in the next section of this staff report. This alternative is provided in the alternative draft resolution included as Attachment No. PC 1.
- 2. Redesign of Residential Parking Garage; Waiver of One Space: Reduce the residential parking requirement to two guest parking spaces where three are required by the Zoning Code and require the applicant to redesign the subterranean parking structure level to provide a van accessible guest parking space in addition to one standard guest parking space. The addition of a shared accessible elevator would be required as would changes to the site design to accommodate the required ADA path of travel. This alternative is provided in the alternative draft resolution included as Attachment No. PC 2.
- 3. Redesign of Residential Parking Garage; No Waiver: Require the applicant to redesign the subterranean parking structure level to accommodate the required van accessible guest parking space in addition to the two standard guest spaces already provided along with a public elevator to the first level.

Both Alternative Nos. 2 and 3 would require a significant redesign of the proposed subterranean parking structure and main level to accommodate the public elevator access. According to the applicant, both options are cost prohibitive and required parking is readily available on the property within the ground level parking lot. Given the size of the lot, current configuration of the subterranean parking structure, access ramp, and private elevator access to each unit, a redesign to include a van accessible space, path of travel, and an accessible elevator within the subterranean parking structure would require additional site design changes, both in the parking structure and to the above grade location of the homes.

Staff recommends the first alternative identified above. The required parking for the residential units would be provided at 3928 East Coast Highway and signage could be added to enforce the use of the parking space for residential guests only.

Shared Use of Ground Level Parking Lot

Although the Planning Commission expressed concerns with the shared use of the ground level parking lot, staff believes the shared parking arrangement offers a unique opportunity to maximize use of available parking in Corona del Mar, which is often identified as a constrained parking area. Shared parking would allow the efficient use parking spaces that would be available to residents during evening hours when the proposed office uses are closed. This is especially useful for guest parking in the evening when parking demand may exceed available on-site or street spaces. With additional conditions and proper signage, staff believes shared use of the parking lot can operate with minimal conflict.

Staff suggests allowing the commercial users to park exclusively within the ground level parking spaces (excluding the accessible residential guest space) between the hours of 8:00 a.m. and 6:00 p.m., daily. No restrictions to the residential use of the parking would be imposed between the hours of 6:00 p.m. and 8:00 a.m., daily. Condition Nos. 17, 18, and 19 are included to this effect in the draft resolution for approval recommended by staff as Attachment No. PC 1.

Architectural Design and Compatibility

According to the applicant, the project is designed in a soft contemporary architectural style. To better illustrate the architectural design of the proposed project, the applicant has incorporated additional notes on the exterior elevations of the project plans to identify materials and finishes for the new commercial structure and residential units (see Sheets A-5 and A-6 of Attachment No. PC 7).

Finishes include the use of horizontal wood cedar siding that encompasses the vertical elevator tower and horizontal banding around the office addition. This same wood siding would be utilized in a similar treatment of the residential chimneys and on the residential balconies along with tempered glass. The remainder of each façade for both the commercial and residential components would provide a smooth stucco finish to reflect a consistent finish across the entire project site. The project would be painted with a unifying warm color palette to maintain continuity, while each of the commercial and residential components would be painted separate colors to convey the individual character and use of each structure.

Colored renderings and a materials board demonstrating proposed colors and architectural finishes for the project will be provided by the applicant prior to the public hearing.

Retention of Existing Gallo's during Construction

To clarify information provided at the prior Planning Commission meeting, preservation of the existing structure is not required in order to maintain the vested land use rights under the existing Specialty Food Permit. The applicant is proposing to maintain the existing structure for personal business and historical reasons. Refer to the applicant's description and justification, provided as Attachment No. PC 6. The applicant is seeking to keep Gallo's open during construction to maintain an on-going client base. Further, the applicant believes that the existing structure is a nostalgic component of Old Corona del Mar that should not be changed or altered significantly. The exterior of the structure will be painted and finished in smooth stucco with new dual-glazed aluminum windows to match the commercial addition and appear as a unified structure. However, the applicant is proposing to utilize a similar blue awning as a character-defining feature to retain the nostalgic look of Gallo's and identify the Gallo's brand.

Additionally, the Planning Commission inquired to the feasibility of constructing the proposed commercial addition as a separate structure above the existing delicatessen. The building over Gallo's will be a steel frame superstructure with independent footings, columns and beams from the existing building. Building Division staff has reviewed the project plans and determined that the proposed scope of work is structurally feasible. Staff is not opposed to the construction of an entirely new structure for the delicatessen so long as the new gross floor area, total seating, and outdoor dining patio area are consistent with the conditions specified in the Specialty Food Permit.

Summary

Staff recommends that the Planning Commission approve the project as currently designed. During the day, the ground level parking lot will be available for the exclusive use of the commercial tenants (with the retention of one van accessible residential guest space). During evening hours, the shared parking arrangement offers an opportunity to efficiently utilize parking spaces that would be available when the proposed office uses are closed.

Overall, the proposed project would result in the redevelopment of an under-utilized and aging commercial lot with a new office addition that implements the goals and policies for the development of the commercial corridor of Corona del Mar. The project would also result in the redevelopment of a vacant lot that was specifically re-designated for residential use as part of the 2006 General Plan Update to encourage its redevelopment.

Public Notice

The public hearing notice for this item was revised to include a parking waiver of one residential guest parking space as a component of the conditional use permit. The revised notice was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this

hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Alternatives

Staff believes that the findings for approval can be made for the proposed project as recommended and the facts in support of the required findings are presented in the draft resolution (Attachment No. PC 1). The following alternatives are available to the Planning Commission:

- 1. The Planning Commission may approve the alternative draft resolution provided as Attachment No. PC 2, which incorporates facts in support of findings to waive one residential guest parking space for the residential component of the project. Conditions of approval have been included requiring the subterranean parking structure to be redesigned to accommodate a van accessible guest parking space and publicly accessible elevator to the main level of the project. Final approval of the architectural design of the residential development will be subject to review by the Community Development Director to ensure substantial conformance with the approved design.
- 2. The Planning Commission may suggest specific changes that are necessary to alleviate any concerns. If any additional requested changes are substantial, the item could be continued to a future meeting. Should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new findings and/or conditions.
- 3. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission may deny the application and provide facts in support of denial to be included in the attached draft resolution for denial (Attachment No. PC 3).

Prepared by: Submitted by:

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Associate Planner

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Makana Nova Assistant Planner

ATTACHMENTS

- PC 1 Draft Resolution of Approval with Findings and Conditions
- PC 2 Alternative Draft Resolution of Approval with Findings and Conditions
- PC 3 Draft Resolution for Denial
- PC 4 Planning Commission Minutes- December 6, 2012
- PC 5 Public Comment Letters
- PC 6 Applicant's Description and Justification
- PC 7 Project Plans

Attachment No. PC 1

Draft Resolution of Approval with Findings and Conditions

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2012-011, MODIFICATION PERMIT NO. MD2012-011, SITE DEVELOPMENT REVIEW NO. SD2012-001, TENTATIVE TRACT MAP NO. NT2012-001, AND VARIANCE NO. VA2012-002 FOR THE CONSTRUCTION OF A 2,160-SQUARE-FOOT COMMERCIAL OFFICE ADDITION AND SIX DWELLING UNITS LOCATED AT 3900 AND 3928 EAST COAST HIGHWAY (PA2010-061)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Marcelo E. Lische, architect representing property owner, Magdi Hanna, with respect to property located at 3900 and 3928 East Coast Highway, and legally described as Lots 54, 55, 56, 57, 58, and portions of abandoned alley, Block B, Tract No. 673, requesting approval of a site development review, conditional use permit, modification permit, tentative tract map, and variance.
- 2. The project includes a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space shared, ground level parking lot. The following approvals are requested or required in order to implement the project as proposed:
 - a. A site development review to ensure compatibility with the site and surrounding land uses.
 - b. A conditional use permit to allow parking for nonresidential uses in a residential zoning district and to allow off-site parking.
 - c. A modification permit to allow a retaining wall up to 17 feet 2 inches in height, where the Zoning Code limits the height to 8 feet.
 - d. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area, where a 20-foot setback is currently required.
 - e. A tentative tract map for condominium purposes and to consolidate five lots and portions of a vacated alley into two lots.
- 3. The subject property at 3900 East Coast Highway is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).

- 4. The subject property at 3928 East Coast Highway is located within the Multiple-Unit Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential (RM).
- 5. The subject properties are not located within the coastal zone.
- 6. A public hearing was held on December 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. The Planning Commission voted to continue the item to the January 3, 2013 meeting.
- 6-7. A public hearing was held on January 3, 2013, in the City Hall Council Chambers, 3300

 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code.

 Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 32 (Infill Development Projects). This exemption applies to in-fill development projects in urban areas that are consistent with the General Plan and applicable development standards. In addition, the proposed development must occur on a site of no more than five acres, have no value as habitat for endangered, rare or threatened species, be adequately served by all utilities and public services, and must not result in any significant effects relating to traffic, air quality, water quality, or any other significant effect on the environment due to an unusual circumstance.
- 2. An analysis and exemption determination was prepared for this project. CEQA Class 32 consists of projects characterized as in-fill development meeting the conditions described above. The proposed project consists of the development of new commercial office space with required off-street parking and six detached dwelling units and is consistent with the City's General Plan land use designations (Corridor Commercial and Multiple-Unit Residential) and zoning designations. Potential development of the project site was considered and analyzed in the City's 2006 General Plan EIR for potential environmental impacts. Based on that analysis, there is no reasonable probability that the proposed project will have a significant effect on the environment due to unusual circumstances, nor will the project result in any short-term or long-term impacts that were not previously considered in the Newport Beach General Plan and General Plan EIR. Implementation of the proposed project will not result in any adverse effects on sensitive biological resources, traffic, air quality, noise or water quality. The project site does not exceed five acres in area, is located in an urban area, and can be adequately served by all required utilities and public services.

Therefore, the proposed project meets all of the conditions described above for in-fill development and qualifies for a Class 32 exemption.

SECTION 3. REQUIRED FINDINGS.

Site Development Review

1. A site development review is required for the construction of five or more residential units processed in conjunction with a tentative tract map. Also, because the proposed project is essentially a mixed-use development with horizontal inter-mixing of residential and commercial uses and a shared parking lot, the site development review analyzes the project as a whole for compatibility with the site and surrounding land uses. In accordance with Section 20.52.080 (Site Development Review) of the Zoning Code, the Planning Commission must also make the following findings for approval of a site development review:

Finding:

A. Allowed within the subject zoning district;

Facts in Support of Finding:

- A-1. The zoning designation for the commercial component at 3900 East Coast Highway is Commercial Corridor (CC), which is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. A commercial building with retail, office, and restaurant uses are permitted for the commercial component of the proposed project at 3900 East Coast Highway. The existing food use (Gallo's Deli) was previously permitted through Specialty Food Permit No. 38 and would continue operating under said permit.
- A-2. The zoning designation for the residential component at 3928 East Coast Highway is Multiple-Unit Residential (RM, 8 DU), which is intended to provide for areas appropriate for multi-unit residential developments containing attached or detached dwelling units. The site is limited to a maximum of eight dwelling units. The proposed project consists of the development of six detached dwelling units, which is consistent with the zoning designation of the site.
- A-3. The subject property is not part of a specific plan area.

Finding:

- B. In compliance with all of the applicable criteria [below]:
 - a. Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;

- b. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;
- c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;
- d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;
- e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and
- f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and

Facts in Support of Finding:

- Ba-1. The proposed detached residential condominiums are permitted uses within the RM General Plan land use designation and zoning district. The commercial component of the project would consist of a general office and food use, which are permitted uses within the CC General Plan land use designation and zoning district. The food use is an existing use which would continue operating under Specialty Food Permit No. 38.
- Ba-2 As required by the Zoning Code, a conditional use permit has been requested for the commercial off-site parking arrangement on the residential lot, a variance has been requested to establish a 15-foot front setback for the purposes of setbacks and buildable area for the residential component, and a modification permit has been requested to allow for the proposed height of the retaining wall.
- Ba-3. The size, density, and character of the proposed residential dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that requires multi-family dwellings to be designed to convey a high quality architectural character. Consistent with this policy, the architectural treatment of the building includes high quality finishes and modulation of mass to convey the character of separate living units and avoiding the appearance of a singular building volume. The roofs have been designed with inverted sloping planes to provide visual interest. Significant private open space would also be provided in the form of large balconies, yard areas, and further complemented with additional common recreational open space area to provide a pleasant living environment with opportunities for recreation.

- Ba-4. The General Plan also includes Policy LU 6.20.1 that encourages neighborhood serving uses that complement existing development. Policy 6.20.3 encourages the redevelopment of residential parcels immediately adjoining commercial uses that front onto Coast Highway for surface parking. The proposed project requests a shared parking arrangement that is consistent with the policy overview for the Corona Del Mar corridor.
- Bb-1. The residential and commercial components of the project are integrated as a unified development through the use of similar architectural style and design elements, shared use of parking, and internal pedestrian connectivity.
- Bb-2. The proposed office addition above the existing food use has been designed to improve the aesthetics of the site and improve the commercial presence and interface on East Coast Highway.
- Bb-3. Due to the approximate 17-foot grade differential between the project site and the existing residential property to the rear at 408 Hazel Drive and 10-foot 7-inch separation from the commercial addition to the residential property line, the residential property will not be negatively impacted by the project and will maintain increased privacy and open space.
- Bb-4. Consistent with General Plan Policy LU 6.20.3 and the Policy Overview for Corona del Mar, to facilitate redevelopment of the commercial lot, parking spaces required for the office addition would primarily be accommodated on the adjacent residential lot. During the evening, t\(\text{The parking spaces would also serve as an area forprovide one guest additional parking spaceopportunities for the residential development. This shared parking arrangement provides flexibility to accommodate the varying peak parking demands of the commercial and residential uses, efficiently utilizes the site to maximize the number of spaces that can be provided on-site, and serves as a buffer between the proposed residential units and expanded commercial building.
- Bb-5. The residential component of the project has been designed as six detached units above grade, minimizing the bulk and mass of the project and provides for increased open space, light, and air for each unit. Below grade, the project has been designed to efficiently accommodate private garages and guest parking within a single subterranean parking structure.
- Bb-6. The mechanical equipment enclosure for the commercial building has been located approximately 29 feet away from the adjacent residential lot to the rear and approximately 57 feet from the proposed residential units to the west to reduce noise impacts, and would be screened within an equipment enclosure.
- Bb-7. Both the commercial and residential components of the project provide separate and well-defined entries.

- Bc-1. The unified design theme of the commercial and residential component of the project provides for an architectural transition between the residential uses that front East Coast Highway to the east and the commercial corridor that begins to the west.
- Bc-2 The height and bulk of the proposed commercial building are consistent in scale with the commercial building to the west that has roof top parking. The commercial building would also be setback 10 feet 7 inches to the existing residential property line located to the rear and due to the difference in grade (approx. 17 feet), the visual bulk of the building would be minimized when viewed from above.
- Bc-3. The proposed commercial building fronts East Coast Highway, thereby implementing the General Plan policies to foster pedestrian activity with the Corona del Mar commercial corridor.
- Bc-4. The front façade of the commercial building includes both vertical and horizontal off-sets and utilizes a variation of building materials to provide enhanced visual relief.
- Bc-5. The proposed residential units have been designed with horizontal off-sets and variation in roof heights to provide visual interest. In addition, the massing of the units is broken up by the varying building separation.
- Bc-6. The height, bulk, and scale of the residential units are consistent with the adjacent residential condominium complex to the east.
- Bc-7. The shared ground level parking lot provides a buffer between the proposed commercial and residential uses and is designed to maintain privacy for the residential tenants and protection from vehicular impacts.
- Bd-1. The project would consolidate the three existing driveways along East Coast Highway into two driveways, thereby reducing potential conflicts and increasing vehicular safety.
- Bd-2. The consolidation of driveways also increases the number of on-street parking spaces along the project frontage from two spaces to a total of five spaces (three new spaces).
- Bd-3. The residential component includes separate and independent access via the easterly driveway into a subterranean parking structure. Furthermore, each residential unit would be afforded a private enclosed garage with direct interior access to their units.
- Bd-4. The project results in a total peak parking requirement of 24 ground level spaces (nine spaces for the commercial office floor area, 12 residential parking spaces, and three residential guest parking spaces), which can be provided

- entirely on-site within the 14-space subterranean parking lot and the 10-space ground level parking lot.
- Bd-5. The existing specialty food use was approved under Specialty Food Permit No. 38 without any required parking and will continue to operate as a vested land use right.
- Bd-6 The 10-space ground level parking lot would be accessed via the westerly driveway and would accommodate parking for the commercial uses and guests of the residential units. The shared parking arrangement allows for flexibility for use of the parking spaces during the varying peak parking demands of the commercial and residential uses.
- Bd-7. The proposed ground level parking lot has been designed to accommodate and provide safe access for emergency, delivery, and refuse collections vehicles, as determined by the City Traffic Engineer.
- Bd-8. The project provides adequate sight distance at each driveway, as determined by the City Traffic Engineer.
- Bd-9. The project would include enhanced pedestrian walkways that provide access between the various uses and within the project site, and to the surrounding public sidewalks and uses.
- Be-1. The residential component includes the enhanced use of landscaping, including a variation of ornamental groundcover, vines, shrubs, and trees, to help soften and buffer the massing of the condominium units from the commercial uses to the west, residential uses to east, and from East Coast Highway.
- Be-2. The shared parking lot complies with the landscape parking lot requirements of Newport Beach Municipal Code (NBMC) Sec. 20.40.070.D.3 (Landscaping) and includes adequate and effective use of ground cover, hedges, and shade trees. The parking lot is also screened from East Coast Highway by a 5-foot-wide planter.
- Be-3. A six-foot-high block wall and row of columnar trees would be provided between the residential units and the shared parking to provide a screening buffer.
- Be-4. The project is subject to the City's Water Efficient Landscape Ordinance (Chapter 14.17 of NBMC).
- Be-5. The relocated outdoor dining area of the existing food use will be better defined for compliance with the condition of Specialty Food Permit No. 38 through the use of planter boxes, which will also improve the appearance of the site.
- Be-6. The proposed residential development includes a large common outdoor living area of 533 square feet that includes a spa and barbeque area. In addition,

- each unit is afforded private outdoor living space in the form of large balconies and/or private yard areas.
- Bf-1. The portion of East Coast Highway, on which the project is located, is not a designated coastal view road and is not considered a public view corridor.

Finding:

C. The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.

Facts in Support of Finding:

- C-1. The project has been conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents.
- C-2. The project's trash enclosure would be shared between the residential and commercial component, and would be located at the rear of the commercial lot. The size, design, location, and screening of the refuse enclosure comply with the requirements of NBMC Sec. 20.30.120 ensuring compatibility with the onsite and adjacent uses. Adequate access to refuse containers would be provided through the shared parking lot and noise and visual impacts to the adjacent residential use to the rear would be minimized due to the retaining wall, differences in grade, and landscaping.
- C-3. The project is subject to the City's Outdoor Lighting requirements contained with Section 20.30.070 of the Zoning Code.
- C-4. The relocated 125-square-foot outdoor dining area of the existing food use would be covered by the office addition above and would be screened and noise attenuated from the existing adjacent residential use to the rear due to the difference in grade.
- C-5. The specialty food use and the proposed general office would not maintain late hours as defined by the Zoning Code to be later than 11:00 p.m.
- C-6. Roof-top mechanical equipment would be fully enclosed within an equipment screen and would not be visible from the residences above. The rooftop mechanical equipment enclosure has been located at the center of the commercial building to minimize the bulk of the building as viewed from East Coast Highway.

C-7. Tenant improvements to the new commercial component of the development will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Conditional Use Permit – General Findings

2. A conditional use permit is requested to allow off-site parking for the commercial development at 3900 East Coast Highway to be located on the adjacent residential property at 3928 East Coast Highway. In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a conditional use permit are set forth:

<u>Finding</u>

A. The use is consistent with the General Plan and any applicable specific plan:

Facts in Support of Finding

- A-1. The proposed detached residential condominiums are consistent with the RM General Plan Land Use Element designation.
- A-2. The proposed general office and food uses within the commercial component are consistent with the CC General Plan land use designation.
- A-3. Land Use Policy LU6.20.3 (Expanded Parking) for Corona Del Mar seeks to accommodate the redevelopment of residential parcels immediately adjoining commercial uses that front onto Coast Highway for ground level parking, provided that adequate buffers are incorporated to prevent impacts on adjoining residential uses. The proposed project requests a shared parking orientation that is consistent with the policy overview for the Corona Del Mar corridor. Adequate walls and landscape buffers will be provided to clearly delineate the change of uses along the Coast Highway frontage.
- A-4. The subject properties are not part of a specific plan area.

Finding

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:

Facts in Support of Finding

- B-1. The proposed detached residential condominiums are permitted uses within the RM zoning district.
- B-2. The proposed general office and food uses within the commercial component are consistent with the CC zoning district.

B-3. The required number of parking spaces to accommodate the new commercial development will be provided in a shared parking situation across the commercial property and the adjacent residential property at 3928 East Coast Highway. The proposed parking lot complies with the requirements as provided in Section 20.40.080 (Parking for Nonresidential Uses in Residential Zoning Districts), which requires the parking area to be designed to be compatible with and to not fragment the adjacent neighborhood, located within a reasonable walking distance to the use it is intended to serve, and to not be detrimental or injurious to property and improvements in the neighborhood.

Finding

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:

Facts in Support of Finding

- C-1. All of the required parking for the additional commercial development would be provided within close proximity and in an accessible manner for patrons at 3900 East Coast Highway.
- C-3. The shared parking lot is primarily intended to serve the parking demands of the proposed commercial office floor area; however, parking will be unrestricted in the evenings so as to allow for additional parking opportunities shared parking with the existing food use and guest parking for the residential component.
- C-4. The residential users will have direct access to the commercial site and parking lot through a secured gate, but would be adequately buffered from the parking lot activity by solid 6-foot-high block walls, landscaping buffers, and minimal windows designed facing the parking lot.
- C-5. The project has been reviewed and found to be compliant with the parking area requirements and landscaping standards as provided in Section 20.40.070 (Development Standards for Parking Areas) and the outdoor lighting standards in Section 20.30.070 (Outdoor Lighting).

Finding

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:

Facts in Support of Finding

D-1. The proposed parking lot provides adequate vehicle circulation and parking spaces for patrons.

- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided.
- D-3. The development of the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding

- E-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
- E-2. The proposed commercial and residential development will serve the surrounding residential and retail community. This will revitalize the project site and provide an economic opportunity for the property owner to improve the visual character of East Coast Highway, a major thoroughfare through Corona Del Mar.

Conditional Use Permit- Additional Findings for Off-Site Parking

3. Pursuant to Section 20.40.100 of the Zoning Code, off-street parking on a separate lot from the project site also requires the approval of a conditional use permit. In addition to the standard conditional use permit findings, approval of off-site parking is subject to specific findings. The following findings and facts in support of such findings are set forth:

Finding

A. The parking facility is located within a convenient distance to the use it is intended to serve.

Facts in Support of Finding

A-1. The off-site parking lot, located immediately adjacent to the subject property, is essentially on-site.

Finding

B On-street parking is not being counted towards meeting parking requirements.

Facts in Support of Finding

- B-1. The nine parking spaces required to accommodate the additional commercial development are provided entirely within the parking lot.
- B-2. The enhancement of public improvements and parking are identified as an opportunity for change within Land Use Policy LU3.3 of the General Plan. The proposed project would close an existing driveway on 3928 East Coast Highway and provide additional on-street parking available to the public.

Finding

C Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.

Facts in Support of Finding

- C-1. The Traffic Engineer has reviewed and approved the configuration of the new parking lot extension and proposed changes to the existing parking lot, and has determined that the parking lot design will not create an undue traffic hazard in the surrounding area.
- C-2. The design consolidates three driveways into two driveways, thereby reducing potential conflicts and increasing vehicular safety along East Coast Highway.

Finding

D The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

Facts in Support of Finding

D1. Both of the commercial and residential components of the project site are currently owned in common across six legal lots. The proposed tract map would result in two new lots with commercial development on one and the six-unit residential condominiums on the second. As a condition of approval, the homeowner's association for the condominium development and the property owner of the commercial property will be required to enter into a reciprocal parking agreement for the joint use of the 10-space ground level parking lot; therefore, the parking facility will remain available, marked, and maintained as intended.

Modification Permit

4. A modification permit is requested to allow construction of a retaining wall at a maximum height of 17 feet 2 inches from the finished grade that is located at the northwesterly corner of the lot located at 3900 East Coast Highway, where the Zoning Code limits the height to 8 feet maximum. An increase in height of a retaining wall may be requested per Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) of the Zoning Code. In accordance with Section 20.52.050 (Modification Permits), the Planning Commission must also make the following findings for approval of a modification permit:

Finding:

A. The requested modification will be compatible with existing development in the neighborhood.

Facts in Support of Finding:

- A-1. The view of the new retaining wall from East Coast Highway will be partially shielded by the second floor of the proposed commercial development.
- A-2. To minimize the massing and visual impact of the wall to the on-site users, a planter wall and trash enclosure is proposed to be located in front of the retaining wall and to improve its overall aesthetics.

Finding:

B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.

Facts in Support of Finding:

- B-1. The proposed commercial lot is constrained due to size and the steepness of the slope at northwesterly corner of the lot.
- B-2. The commercial lot is currently developed with a food use and the proposed development includes additional commercial office construction that would maximize the development potential identified by the General Plan floor area limit (0.75 FAR). The proposed retaining wall would accommodate the proposed development and make sufficient useable area available to provide required onsite parking for the new commercial office development.

Finding:

C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in Support of Finding:

C-1. Zoning Code regulations allow retaining walls at a maximum height of 8 feet with a minimum separation requirement of 6 feet between walls. Due to the topography of the project site, the construction of two terraced retaining walls that comply with this standard would result in a significant loss of site area necessary to provide on-site parking, vehicular circulation, and a trash enclosure for the new commercial development

Finding:

D. There are no alternatives to the Modification Permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.

Facts in Support of Finding:

- D-1. Without this approval, the applicant would be required to construct a series of 8-foot retaining walls with a 6-foot separation between walls. This would result in a significant loss of project site area that is necessary to provide required on-site parking for the proposed use.
- D-2. A terraced design that provides the required separation would not be less detrimental to existing residential property located to the rear at 408 Hazel Drive because they would not be able to see the face of the retaining wall from their vantage point due to the grade differential. Also, since the retaining wall is partially screened as viewed from East Coast Highway, the terraced design would not be readily visible from the public.
- D-3. The location of the retaining wall, at the rear of the subject property is appropriate given the proposed retaining wall would be adequately screened from the adjacent right-of-way. The retaining wall will provide a planter wall and trash enclosure in front of it to provide variation and articulation to improve the visual aesthetic of the retaining wall, consistent with the intent of the wall separation requirement.

Finding:

E. The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Facts in Support of Finding:

- E-1. The proposed retaining wall would provide a wrought iron guardrail for safety on the higher side of the property on the adjacent commercial and residential properties.
- E-2. The highest point of the retaining wall is near the northwest corner of the lot and is screened by the proposed commercial building as viewed from Coast Highway. Also, the retaining wall drops approximately 8 feet over a distance of 16 feet 6 inches, minimizing the height of the wall as the existing grade drops so that the visual impact of the wall is reduced.
- E-3. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development. The portion of the property at 3900 East Coast Highway where the retaining wall is proposed was previously an alley that has recently been vacated by the City and granted to the property owner of 3900 East Coast Highway.

Variance

5. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area where a 20-foot setback is required. In accordance with Section 20.52.090.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of a variance are set forth:

Finding:

A. That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.

Facts in Support of Finding:

- A-1. The subject property is a wide (approx. 165 feet), but shallow lot (approx. 91 feet). The shallowness of the lot creates a design constraint for developing the site to its maximum allowed density of eight dwelling units, while still providing for required parking, vehicular circulation, open space, and the required setbacks. Due to these constraints, the applicant is only proposing to develop a total of six dwelling units but is requesting the ability to encroach 5 feet into the front 20-foot setback, similar to other developed RM lots in the vicinity.
- A-2. A 20-foot setback, corresponding buildable area, and resulting floor area limit are not appropriate for this property based on a review of the development pattern of adjacent multi-unit residential developments east of the project site that also front onto East Coast Highway.

Finding:

B. That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Facts in Support of Finding:

- B-1. Immediately to the east of the subject property is a large 18-unit residential condominium complex (401 Seaward Rd.) that maintains a 15-foot front setback adjacent to East Coast Highway and to Seaward Road. This property is located on a one acre lot and is permitted a much larger floor area limit of 1.75 (instead of 1.5).
- B-2. Further east are several RM-6000 zoned lots (4104-4348 Shorecrest Ln.) that also maintain 15-foot front setbacks adjacent to East Coast Highway. These lots are not subject to a floor area limit ratio, but rather are limited to a 60 percent maximum lot coverage requirement.
- B-3. The setbacks and allowed floor area for nearby multi-unit developments are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback and resulting floor area limit would deprive the subject property of privileges enjoyed by nearby RM lots.
- B-4. Granting of the variance would allow the applicant to develop a multi-unit residential development utilizing similar setbacks and to a more reasonable floor area limit consistent with other multi-unit residential developments in the area.

Finding:

C. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.

Facts in Support of Finding:

C-1. The 18-unit condominium complex to the east is located on a larger one acre lot and is permitted a larger floor area limit of 1.75 times the buildable area (instead of 1.5). If the subject property were allowed a similar 1.75 floor area limit, the floor area limit would be 14,719 square feet, which is larger than the 13,703 square feet proposed. Also, the RM-6000 zoned lots further east are not subject to a floor area limit ratio, but rather are regulated by a 60 percent maximum lot coverage requirement. For comparison, the proposed lot coverage of the residential development is only 38 percent. In both these examples of nearby RM lots, the setbacks, buildable area, and total allowed floor areas are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback, buildable area, and resulting floor

area limit would deprive the subject property of privileges enjoyed by nearby RM lots.

Finding:

D. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

- D-1. The size of the proposed residential development would be in scale with nearby multi-unit residential developments located on East Coast Highway and Shorecrest Lane.
- D-2. The granting of the Variance would not constitute a special privilege inconsistent with the limitations upon other properties zoned RM as it allows the property owner to maintain equity with other multiple-unit developments along East Coast Highway.

Finding:

E. That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

- E-1. The 5-foot encroachment into the 20-foot setback would not be detrimental to the City or result in a hazard to the existing community or future residents of the project. The project would provide a 15-foot front setback to the street, which is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- E-2. Trees and shrubs will be planted within the 15-foot front setback to act as a buffer and soften the visual impact along the East Coast Highway frontage.
- E-3. The approval of this Variance is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.
- E-4. The proposed 15-foot setback for the residential structures would be consistent with the development pattern of the multi-unit developments to the east and compatible with the commercial lots to the west which so not have front setback requirements.

E-5. Of the 1,100 square feet of additional floor area that the applicant is requesting above the maximum floor area limit (based on a buildable area utilizing a 20-foot setback), 1,018 square feet of that floor area is located below grade within the private garage area that is counted towards gross floor area and garage stairs. Therefore, this additional floor area is predominately below grade and does not add significant bulk or mass to the development as compared to what normally be allowed to be developed above grade using the 20-foot setback and resulting floor area limit.

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

- F-1. The intent of the front setback is to provide adequate separation for light, air, privacy and open space adjacent to the street. In this case, the project would provide a 15-foot front setback to the street, which is consistent with the front setbacks of the other RM zoned lots east. Fifteen feet is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- F-2. The subject property is designated RM by the Land Use Element of the General Plan and zoned RM. Both designations are intended primarily for multi-family residential development containing attached or detached dwelling units. The subject property is entitled for the development of eight dwelling units where six are proposed. Approval of the Variance will not affect residential density.
- F-3. The subject property is not located within a specific plan area.
- F-4. The overall design, based upon the proposed plans, meets residential design criteria provided within Section 20.48.180.B.2 (Design Criteria) by avoiding long unarticulated walls and providing architectural treatment of all elevations.

Tentative Tract Map

6. A tentative tract map is requested for residential condominium purposes, to create six airspace condominium units. The map would also serve to consolidate five lots and portions of a vacated alley into two lots. In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of a tentative tract map are set forth:

Finding:

A. That the proposed map and the design or improvements of the subdivision are consistent with General Plan and any applicable specific plan, and with the applicable provisions of the Subdivision Map Act and the City Subdivision Code.

Facts in Support of Finding:

- A-1. The project is consistent with the Commercial Corridor and Multiple Unit Residential General Plan designations of the project site.
- A-2. The Public Works Department has reviewed the proposed tentative map and found it consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

B. That the site is physically suitable for the type and density of development.

Facts in Support of Finding:

- B-1. The residential portion of the project site is currently a vacant paved/gravel lot and the commercial portion of the project site is currently developed with a 535-square-foot delicatessen.
- B-2. The site where construction will occur is relatively flat and based on the geologic investigation, the site is safe and suitable for development. The subject property has been placed with a significant amount of fill to provide a generally level site perched above the neighboring descending ravine. The fills encountered appear to be dense and compacted to acceptable levels. Expansive soils were encountered and the soils report recommends special attention be given to the project design and maintenance in compliance with Expansive Soil Guidelines.
- B-3. A preliminary Acoustical Study prepared for the project estimates that future traffic noise exposure will be 72.5 dB CNEL to the nearest facades to East Coast Highway. All multi-family projects must comply with the State of California's noise standards that specify that the intrusion of noise from exterior sources (such as traffic) shall not exceed a CNEL of 45 dB within the interior of any habitable space. This is also consistent with the City's interior noise standards established in the General Plan Noise Element, including Policy N1.1, N1.2, and N1.5. The Acoustical Study concludes that with appropriate noise control measures incorporated into the design of the proposed project (e.g., ventilation and air conditioning, weather stripping, increased sound-rated doors, windows, and wall finishes, etc.), no significant noise impacts will occur and the interior noise levels would comply with the City and State interior noise standard of 45 dB CNEL for residential units.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably

injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

- C-1. The portion of the project site to be developed does not support any environmental resources as indicated in the jurisdictional delineation prepared for the project. The project would not require discharge of fill into areas subject to Army Corp of Engineers, California Department of Fish and Game, or California Coastal Commission jurisdiction within the Buck Gully drainage. As such, there would be no significant impacts to the Buck Gully drainage associated with the project.
- C-2. Portions of the Buck Gully drainage are within areas that could be potentially affected by fuel modification activities, including cutting of vegetation. The jurisdictional delineation concludes that alkali bulbrush and southern cattail are growing in the stream channel and account for minimal biomass and would not likely require removal or thinning, as they pose no fire risk or theat. As such, there would be no impacts to wetland vegetation associated with the project.

Finding:

D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Facts in Support of Finding:

- D-1. The project consists of six residential units and commercial development at 0.75 floor area ratio as allowed by the Zoning Code and the General Plan.
- D-2. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.
- D-3. All construction for the project will comply with Building, Public Works, and Fire Codes. Public improvements will be required of the developer per Section 19.28.10 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of,

property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

Facts in Support of Finding:

- E-1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
- E-2. Public improvements will be required of the applicant per the Municipal Code and the Subdivision Map Act.
- E-3. An existing 7.5-foot-wide utilities easement at the rear of the two lots will be retained. An approximate 15-foot-wide access and utilities easement located along the eastern side of the residential lot that is no longer needed would be vacated. An existing slope and drainage easement over the southeasterly corner of the residential lot would also be vacated and replaced with a new variable width storm drain easement. Southern California Edison power lines running in the rear of the property will be re-routed and placed underground.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

F-1. The site is not subject to a Williamson Act contract.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

G-1. The subject property is not located within the boundaries of a specific plan.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Facts in Support of Finding:

- H-1. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate.
- H-2. The Newport Beach Building Division will enforce Title 24 compliance through the plan check and field inspection processes for the construction of any future proposed residences.

Finding:

I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.

Facts in Support of Finding:

I-1. There are no existing dwelling units on the project site. Rather the proposed project includes the construction of six new condominium units to contribute to the City's share of the regional housing need. The applicant will be responsible for the payment of appropriate fair share, park, and housing in-lieu fees for the development of these new dwelling units.

Finding:

J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

Facts in Support of Finding:

J-1. Waste discharge will be directed into the existing sewer system and will not violate Regional Water Quality Control Board (RWQCB) requirements.

J-2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

Facts in Support of Finding:

K-1. The project site is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby approves Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Variance No. VA2012-002, and Tentative Tract Map No. NT2012-001(PA2012-061) subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This Site Development Review, Conditional Use Permit, Modification Permit, and Variance actions shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
- 3. This Tentative Tract Map action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF JANUARY, 2013.

1 ACCED, ALL INCVED AND ADOLIED THIC S	DAT OF VANOART, 2013.	
AYES:		
NOES:		
ABSTAIN:		
ABSENT:		

BY:	
_	Michael Toerge, Chairman
BY:	
_	Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

- 1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
- Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002.
- 5. <u>Prior to the issuance of a building permit</u>, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 6. <u>Prior to the issuance of building permits</u>, Fair Share Traffic Fees shall be paid for the new dwelling units and commercial floor area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.
- 7. <u>Prior to issuance of building permits</u>, an in-lieu housing fee for six dwelling units (currently \$20,513.00 per new additional dwelling unit) shall be paid in accordance with City Council Resolution No. 2010-44 of the Newport Beach Municipal Code.
- 8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
- 9. This approval may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 10. The existing food use shall continue operating in compliance with the conditions of approval of Specialty Food Permit No. 38. Any intensification of use shall require the application of a new conditional or minor use permit.

- 11. The existing power poles and overhead power lines located at the rear of the property shall be removed and the power lines shall be undergrounded.
- 12. Flat roof portions of the commercial building shall be constructed to meet "cool roofs" standards for energy efficiency; however, the color and material shall not result in glare as viewed from the residences above. No mechanical equipment shall be permitted on the roof, except within the designated mechanical well and shall not be visible from East Coast Highway or the adjacent residential properties.
- 13. The floor plans and building envelopes for each residential unit are approved as precise plans, unless revisions are approved by the Community Development Director. Future floor area additions to the building envelopes shall be prohibited. The proposed open patio and deck areas for each unit shall not be permitted to be enclosed and the landscape and common open space areas proposed throughout the development site shall be preserved.
- 14. A total of 10 parking spaces shall be provided within the ground level parking lot as illustrated on the approved plans and shall be available for use by guests of the residential tenants and commercial tenants and customers.
- 15. All employees of the commercial building are required to park on site.
- The shared 10-space parking lot shall be used for the parking of passenger vehicles only, with the exception of temporary parking for the loading and unloading of commercial and residential delivery trucks.
- 17. The ground level parking lot (excluding residential Parking Space No. 5) shall be exclusively available for commercial tenants between the hours of 8:00 a.m. and 6:00 p.m., daily. Parking uses shall not be restricted between the hours of 6:00 p.m. and 8:00 a.m., daily. Signage shall be provided enforcing said restrictions.
- 18. One van accessible guest parking space (noted as Space No. 5) shall be maintained within the shared parking lot for the exclusive use of the residential development. Signage shall be provided enforcing said restrictions.
- 16.19. Notwithstanding Condition No. 17, commercial overnight parking within the shared 10-space parking lot shall be prohibited. Residential guest-parking overnight is permitted.
- 17.20. The future homeowner's association for the condominium development and the property owner of the commercial property shall enter into a reciprocal parking and access agreement and parking management plan for the joint use of the 10-space ground level parking lot ensuring the permanently availability of parking. The agreement, approved as to form by the City Attorney's Office, shall be recorded prior to the issuance of the Certificate of Occupancy or final of building permits.

- 18.21. No signs, other than signs designating entrances, exits, and conditions of use shall be maintained in the shared parking lot. Signs shall not exceed four square feet in area and 5 feet in height. The number and location shall be approved by the Community Development Director before installation.
- 19.22. Prior to the issuance of building permits, documents/plans shall be submitted demonstrating compliance with the requirements of Chapter 14.17 (Water-Efficient Landscaping Ordinance) of the Municipal Code.
- 20.23. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- 21.24. Prior to the issuance of a building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
- 22.25. Prior to the final of building permits, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved landscape plan
- 23.26. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
- 24.27. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards
- 25.28. Prior to the issuance of building permits, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are one-foot-candle or less at all property lines. Higher lighting levels are subject to the review and approval of the Community Development Director where it can be shown to be in compliance with the purpose and intent of the Outdoor Lighting section of the Zoning Code.

- 26.29. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code and Water Quality Enforcement Division to confirm control of light and glare.
- 27.30. Separate trash and recycling dumpsters shall be provided for the residential use and the commercial use. All trash shall be stored within the buildings or within dumpsters for residential and commercial uses stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
- 28.31. Prior to the issuance of the certificate of occupancy or final of building permits of the residential units, the future homeowners association shall enter into an agreement with the property owner of the commercial property to allow the use of the trash enclosure and to establish the terms of use and refuse collection.
- 29.32. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
- 30.33. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-ofway
- 31.34. Prior to the issuance of the certificate of occupancy or final of building permits of the residential units, the future homeowners association shall enter into an agreement with the property owner of the commercial property to allow the use of the trash enclosure and to establish the terms of use and refuse collection.
- 32.35. The exterior of the businesses shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
- 33.36. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to the Conditional Use Permit.
- 34.37. No outside paging system shall be utilized in conjunction with this development.
- 35.38. The operator of the commercial building shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by tenants, patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable

- noise control requirements of the Newport Beach Municipal Code.
- 36.39. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District
- 37.40. All exits shall remain free of obstructions and available for ingress and egress at all times.
- 38.41. No building permits may be issued until the appeal period has expired, unless otherwise approved by the Planning Division. Building permits for structures located across the existing property lines shall not be issued until the tract map has been recorded.
- 39.42. A copy of these conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 40.43. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Plaza Corona Del Mar including, but not limited to, the Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Site Development Review No. SD2012-001, Tentative Tract Map No. NT2012-001, and Variance No. VA2012-002 (PA2012-061). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

- 41.44. Fire flow shall be provided in accordance with N.B.F.D. Guideline B.01 "Determination of Required Fire Flow." The fire flow will determine the number of fire hydrants required for the project.
- 42.45. Structures shall meet the requirements of Chapter 7A of the California Building Code, as amended by the City of Newport Beach.
- 43.46. New and existing structures in the project will be required to have fire sprinklers. The sprinkler system shall be monitored by a UL certified alarm service company.

- 44.47. The end of the drive aisle of the shared parking lot shall be identified as a fire lane and marked as per N.B.F.D. Guideline C.01.
- 45.48. Trash enclosures shall be located at least 5 feet from structures, unless, fire sprinklers are provided in the trash enclosure/structure.
- 46.49. A fuel modification plan shall be required for all landscape and must be submitted to the Fire Department. All requirements from N.B.F.D. Guideline G.02 "Fuel Modification Plans and Maintenance Standard" must be met. As per Guideline G.02. tree species are not allowed within 10 feet of combustible structures.

Building Division Conditions

- 47.50. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, Cityadopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. The proposed residential dwelling units do not meet the definition of "townhouse" per CBC 202.
- 48.51. Full access compliance shall be demonstrated and provided in accordance with the February 8, 2012, Building Division letter, CBC 11A and CBC 11B at the time of permit application. The floor and seating plans submitted with the Project Review plans are for reference only. Subsequent plan changes may be required due to code changes prior to submittal for plan review and permitting. This project review does not constitute approval of the floor plans, parking, or other access compliance issues.
- 49.52. All sides of both the commercial and residential structures shall fully comply with the Special Fire Protection Area requirements at the time of permit submittal. These requirements may be found in CBC 7A, Newport Beach Municipal Code and related codes.
- 50.53. Prior to the issuance of building permits, a preliminary plan review meeting shall be scheduled with the Building Division.
- 51.54. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least 2 feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to five minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.
- 52.55. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
- 53.56. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
- 54.57. The construction and equipment staging area shall be located in the least visually prominent area on the site, or another site approved by the Community Development Director, and shall be properly maintained and/or screened to minimize potential unsightly conditions.
- <u>55.58.</u> A 6-foot-high screen and security fence shall be placed around the construction site during construction.
- 56.59. Construction equipment and materials shall be properly stored on the site when not in use.

Public Works Conditions

- 57.60. An encroachment permit is required for all work activities with the public right-of-way.
- 58.61. The parking lot layout shall comply with City Standard F#805-L-A&B and shall be approved by the Public Works Department prior to the issuance of building permits.
- 59.62. All improvements adjacent to the proposed driveway approaches shall comply with the City's sight distance requirement, City Standard 110-L.
- 60.63. In case of damage done to existing public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- 61.64. County Sanitation District fees shall be paid prior to the issuance of any building permits.
- 62.65. Prior to commencement of demolition and grading of the project, the applicant shall submit a construction management and delivery plan to be reviewed and approved by the Public Works Department. The plan shall include discussion of project phasing; parking arrangements for both sites during construction; anticipated haul routes and construction mitigation. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan.
- 63.66. Traffic control and truck route plans shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.
- 64.67. Each unit shall have a dedicated water service installed per STD-502-L or STD-503-L, depending on the size.
- 65.68. New and existing fire services, when required by Fire Department shall be protected by a City approved double check detector assembly and installed per STD-517-L.
- 66.69. New and existing commercial water meter(s) shall be protected by a City approved reduced pressure backflow assembly and installed per STD-520_L-A.
- 67.70. Landscaping lines shall have a dedicated meter and shall be protected by a dedicated City approved reduced pressure backflow assembly per STD-520-L-A.
- 68.71. The proposed driveway to the underground parking garage shall have a maximum slope of 15 percent and a maximum change of grade of 11 percent per City Standard #160-L-C.

69.72. Prior to the issuance of a Certificate of Occupancy for the proposed structures, all public improvements shall be constructed as required by Ordinance and these conditions of approval.

Tract Map Conditions

- 1. A Final Tract Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.
- 2. Prior to recordation of the Final Tract Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
- 3. <u>Prior to recordation of the Final Tract Map</u>, the applicant shall provide a bond/surety in order to guarantee completion of all required public improvements. The bond/surety shall be reviewed and approved by the Public Works Department.
- 4. The existing concrete curb, gutter, and sidewalk along the East Coast Highway frontage shall be reconstructed, per City Standards.
- 5. The unused driveway approaches shall be abandoned and reconstructed with full height curb, gutter, and sidewalk per City Standard #165-L.
- 6. Proposed driveway approaches shall be constructed per City Standard #162-L.
- 7. The proposed storm drain relocation shall be subject to review and approval by the Public Works Department.
- 8. A variable width storm drain easement measured 5 feet from the westerly side of the centerline of the proposed new storm drain location to the easterly property line shall be granted to the City.
- 9. New 36-inch box street trees will be required to be planted on East Coast Highway. The designated street tree for this segment of East Coast Highway is the King Palm (Archontophoenix Cunningham). The number and location of these street trees are subject to approval by the Public Works Department and the Parks and Trees Division of the Municipal Operations Department.

- 10. <u>Prior to or concurrently with the recordation of the Final Tract Map</u>, an approximately 15-foot-wide access and utilities easement through the site adjacent to the eastern property line of 3928 East Coast Highway shall be vacated.
- 11. <u>Prior to or concurrently with the recordation of the Final Tract Map</u>, an existing slope and drainage easement at the southeast portion of the subject property will be realigned so that it will not conflict with the location of proposed structures.
- 12. Applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand; a new 8-inch VCP sewer main shall be installed from the manhole at the Seaward Road/Coast Highway Intersection to the property's frontage. A new sewer main terminal cleanout shall be installed at the end of the new 8-inch BCP main per STD-400-L. Each unit shall have a dedicated sewer lateral with cleanouts installed per STD-406-L.
- 13. Prior to the recordation of the Final Tract Map, a park dedication fee for six dwelling units (currently \$26,125.00 per new additional dwelling unit) shall be paid in accordance with Chapter 19.52 of the Newport Beach Municipal Code. This fee shall be paid upon submittal of the map to the Public Works Department for plan check and deposited into the appropriate Service Area account as identified in the Recreation and Open Space Element of the General Plan.
- 14. The easterly property line of the proposed Lot 2 shall be revised on the Final Tract Map such that the prolongation of the easterly property line directly intersects with the rear property line (i.e. the approximately 82-square-foot notched area illustrated at the northeasterly corner of Lot 2 shall be made a part of Lot 2 and removed from Lot 1).

Attachment No. PC 2

Alternative Draft Resolution of Approval with Findings and Conditions

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2012-011, MODIFICATION PERMIT NO. MD2012-011, SITE DEVELOPMENT REVIEW NO. SD2012-001, TENTATIVE TRACT MAP NO. NT2012-001, AND VARIANCE NO. VA2012-002 FOR THE CONSTRUCTION OF A 2,160-SQUARE-FOOT COMMERCIAL OFFICE ADDITION AND SIX DWELLING UNITS LOCATED AT 3900 AND 3928 EAST COAST HIGHWAY (PA2010-061)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Marcelo E. Lische, architect representing property owner, Magdi Hanna, with respect to property located at 3900 and 3928 East Coast Highway, and legally described as Lots 54, 55, 56, 57, 58, and portions of abandoned alley, Block B, Tract No. 673, requesting approval of a site development review, conditional use permit, modification permit, tentative tract map, and variance.
- 2. The project includes a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space ground level parking lot. The following approvals are requested or required in order to implement the project as proposed:
 - a. A site development review to ensure compatibility with the site and surrounding land uses.
 - b. A conditional use permit to allow parking for nonresidential uses in an off-site residential zoning district and to reduce the off-street parking to require two guest spaces for the six residential units where the Zoning Code requires three spaces.
 - b. A conditional use permit to allow parking for nonresidential uses in a residential zoning district and to allow off-site parking.
 - c. A modification permit to allow a retaining wall up to 17 feet 2 inches in height, where the Zoning Code limits the height to 8 feet.
 - d. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area, where a 20-foot setback is currently required.
 - e. A tentative tract map for condominium purposes and to consolidate five lots and portions of a vacated alley into two lots.

- 3. The subject property at 3900 East Coast Highway is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
- 4. The subject property at 3928 East Coast Highway is located within the Multiple-Unit Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential (RM).
- 5. The subject properties are not located within the coastal zone.
- 6. A public hearing was held on December 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. The Planning Commission voted to continue the item to the January 3, 2013 meeting.
- 6.7. A public hearing was held on January 3, 2013, in the City Hall Council Chambers, 3300

 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code.

 Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 32 (Infill Development Projects). This exemption applies to in-fill development projects in urban areas that are consistent with the General Plan and applicable development standards. In addition, the proposed development must occur on a site of no more than five acres, have no value as habitat for endangered, rare or threatened species, be adequately served by all utilities and public services, and must not result in any significant effects relating to traffic, air quality, water quality, or any other significant effect on the environment due to an unusual circumstance.
- 2. An analysis and exemption determination was prepared for this project. CEQA Class 32 consists of projects characterized as in-fill development meeting the conditions described above. The proposed project consists of the development of new commercial office space with required off-street parking and six detached dwelling units and is consistent with the City's General Plan land use designations (Corridor Commercial and Multiple-Unit Residential) and zoning designations. Potential development of the project site was considered and analyzed in the City's 2006 General Plan EIR for potential environmental impacts. Based on that analysis, there is no reasonable probability that the proposed project will have a significant effect on the environment due to unusual circumstances, nor will the project result in any short-term or long-term impacts that were not previously considered in the Newport Beach General Plan and General Plan EIR. Implementation of the proposed project will not

result in any adverse effects on sensitive biological resources, traffic, air quality, noise or water quality. The project site does not exceed five acres in area, is located in an urban area, and can be adequately served by all required utilities and public services. Therefore, the proposed project meets all of the conditions described above for in-fill development and qualifies for a Class 32 exemption.

SECTION 3. REQUIRED FINDINGS.

Site Development Review

1. A site development review is required for the construction of five or more residential units processed in conjunction with a tentative tract map. Also, because the proposed project is essentially a mixed-use development with horizontal inter-mixing of residential and commercial uses and a ground level parking lot, the site development review analyzes the project as a whole for compatibility with the site and surrounding land uses. In accordance with Section 20.52.080 (Site Development Review) of the Zoning Code, the Planning Commission must also make the following findings for approval of a site development review:

Finding:

A. Allowed within the subject zoning district;

Facts in Support of Finding:

- A-1. The zoning designation for the commercial component at 3900 East Coast Highway is Commercial Corridor (CC), which is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. A commercial building with retail, office, and restaurant uses are permitted for the commercial component of the proposed project at 3900 East Coast Highway. The existing food use (Gallo's Deli) was previously permitted through Specialty Food Permit No. 38 and would continue operating under said permit.
- A-2. The zoning designation for the residential component at 3928 East Coast Highway is Multiple-Unit Residential (RM, 8 DU), which is intended to provide for areas appropriate for multi-unit residential developments containing attached or detached dwelling units. The site is limited to a maximum of eight dwelling units. The proposed project consists of the development of six detached dwelling units, which is consistent with the zoning designation of the site.
- A-3. The subject property is not part of a specific plan area.

Finding:

B. In compliance with all of the applicable criteria [below]:

- a. Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;
- b. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;
- c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;
- d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;
- e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and
- f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and

- Ba-1. The proposed detached residential condominiums are permitted uses within the RM General Plan land use designation and zoning district. The commercial component of the project would consist of a general office and food use, which are permitted uses within the CC General Plan land use designation and zoning district. The food use is an existing use which would continue operating under Specialty Food Permit No. 38.
- Ba-2 As required by the Zoning Code, a conditional use permit has been requested for the commercial off-site parking arrangement on the residential lot, a variance has been requested to establish a 15-foot front setback for the purposes of setbacks and buildable area for the residential component, and a modification permit has been requested to allow for the proposed height of the retaining wall.
- Ba-3. The size, density, and character of the proposed residential dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that requires multi-family dwellings to be designed to convey a high quality architectural character. Consistent with this policy, the architectural treatment of the building includes high quality finishes and modulation of mass to convey the character of separate living units and avoiding the appearance of a singular building volume. The roofs have been designed with inverted sloping planes to provide visual interest. Significant private open space would also be provided in the form of large balconies, yard

- areas, and further complemented with additional common recreational open space area to provide a pleasant living environment with opportunities for recreation.
- Ba-4. The General Plan also includes Policy LU 6.20.1 that encourages neighborhood serving uses that complement existing development. Policy 6.20.3 encourages the redevelopment of residential parcels immediately adjoining commercial uses that front onto Coast Highway for surface parking. The proposed project requests a parking arrangement that is consistent with the policy overview for the Corona Del Mar corridor.
- Bb-1. The residential and commercial components of the project are integrated as a unified development through the use of similar architectural style and design elements, shared use of parking, and elements and internal pedestrian connectivity.
- Bb-2. The proposed office addition above the existing food use has been designed to improve the aesthetics of the site and improve the commercial presence and interface on East Coast Highway.
- Bb-3. Due to the approximate 17-foot grade differential between the project site and the existing residential property to the rear at 408 Hazel Drive and 10-foot 7-inch separation from the commercial addition to the residential property line, the residential property will not be negatively impacted by the project and will maintain increased privacy and open space.
- Bb-4. Consistent with General Plan Policy LU 6.20.3 and the Policy Overview for Corona del Mar, to facilitate redevelopment of the commercial lot, parking spaces required for the office addition would primarily be accommodated on the adjacent residential lot. The parking spaces would also serve as an area for guest parking for the residential development. This shared parking arrangement provides flexibility to accommodate the varying peak parking demands of the commercial and residential uses, efficiently utilizes the site to maximize the number of spaces that can be provided on-site, and serves as a buffer between the proposed residential units and expanded commercial building.
- Bb-5. The residential component of the project has been designed as six detached units above grade, minimizing the bulk and mass of the project and provides for increased open space, light, and air for each unit. Below grade, the project has been designed to efficiently accommodate private garages and guest parking within a single subterranean parking structure.
- Bb-6. The mechanical equipment enclosure for the commercial building has been located approximately 29 feet away from the adjacent residential lot to the rear and approximately 57 feet from the proposed residential units to the west to reduce noise impacts, and would be screened within an equipment enclosure.

- Bb-7. Both the commercial and residential components of the project provide separate and well-defined entries.
- Bc-1. The unified design theme of the commercial and residential component of the project provides for an architectural transition between the residential uses that front East Coast Highway to the east and the commercial corridor that begins to the west.
- Bc-2 The height and bulk of the proposed commercial building are consistent in scale with the commercial building to the west that has roof top parking. The commercial building would also be setback 10 feet 7 inches to the existing residential property line located to the rear and due to the difference in grade (approx. 17 feet), the visual bulk of the building would be minimized when viewed from above.
- Bc-3. The proposed commercial building fronts East Coast Highway, thereby implementing the General Plan policies to foster pedestrian activity with the Corona del Mar commercial corridor.
- Bc-4. The front façade of the commercial building includes both vertical and horizontal off-sets and utilizes a variation of building materials to provide enhanced visual relief.
- Bc-5. The proposed residential units have been designed with horizontal off-sets and variation in roof heights to provide visual interest. In addition, the massing of the units is broken up by the varying building separation.
- Bc-6. The height, bulk, and scale of the residential units are consistent with the adjacent residential condominium complex to the east.
- Bc-7. The ground level parking lot provides a buffer between the proposed commercial and residential uses and is designed to maintain privacy for the residential tenants and protection from vehicular impacts.
- Bd-1. The project would consolidate the three existing driveways along East Coast Highway into two driveways, thereby reducing potential conflicts and increasing vehicular safety.
- Bd-2. The consolidation of driveways also increases the number of on-street parking spaces along the project frontage from two spaces to a total of five spaces (three new spaces).
- Bd-3. The residential component includes separate and independent access via the easterly driveway into a subterranean parking structure. Furthermore, each residential unit would be afforded a private enclosed garage with direct interior access to their units.

- Bd-4. The project results in a total peak parking requirement of 24-23 surface spaces (nine spaces for the commercial office floor area, 12 residential parking spaces, and three two residential guest parking spaces with a one-space reduction in the residential guest parking requirement), which can be provided entirely onsite within the 14-space subterranean parking structure and the 10-space ground level parking lot.
- Bd-5. The existing specialty food use was approved under Specialty Food Permit No. 38 without any required parking and will continue to operate as a vested land use right.
- Bd-6 The 10-space ground level parking lot would be accessed via the westerly driveway and would accommodate parking for the commercial uses and guests of the residential units. The shared parking arrangement allows for flexibility for use of the parking spaces during the varying peak parking demands of the commercial and residential uses.
- Bd-7. The proposed ground level parking lot has been designed to accommodate and provide safe access for emergency, delivery, and refuse collections vehicles, as determined by the City Traffic Engineer.
- Bd-8. The project provides adequate sight distance at each driveway, as determined by the City Traffic Engineer.
- Bd-9. The project would include enhanced pedestrian walkways that provide access between the various uses and within the project site, and to the surrounding public sidewalks and uses.
- Be-1. The residential component includes the enhanced use of landscaping, including a variation of ornamental groundcover, vines, shrubs, and trees, to help soften and buffer the massing of the condominium units from the commercial uses to the west, residential uses to east, and from East Coast Highway.
- Be-2. The ground level parking lot complies with the landscape parking lot requirements of Newport Beach Municipal Code (NBMC) Sec. 20.40.070.D.3 (Landscaping) and includes adequate and effective use of ground cover, hedges, and shade trees. The parking lot is also screened from East Coast Highway by a 5-foot-wide planter.
- Be-3. A six-foot-high block wall and row of columnar trees would be provided between the residential units and the ground level parking to provide a screening buffer.
- Be-4. The project is subject to the City's Water Efficient Landscape Ordinance (Chapter 14.17 of NBMC).

- Be-5. The relocated outdoor dining area of the existing food use will be better defined for compliance with the condition of Specialty Food Permit No. 38 through the use of planter boxes, which will also improve the appearance of the site.
- Be-6. The proposed residential development includes a large common outdoor living area of 533 square feet that includes a spa and barbeque area. In addition, each unit is afforded private outdoor living space in the form of large balconies and/or private yard areas.
- Bf-1. The portion of East Coast Highway, on which the project is located, is not a designated coastal view road and is not considered a public view corridor.

Finding:

C. The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.

Facts in Support of Finding:

- C-1. The project has been conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents.
- C-2. The project's trash enclosure would be shared between the residential and commercial component, and would be located at the rear of the commercial lot. The size, design, location, and screening of the refuse enclosure comply with the requirements of NBMC Sec. 20.30.120 ensuring compatibility with the onsite and adjacent uses. Adequate access to refuse containers would be provided through the ground level parking lot and noise and visual impacts to the adjacent residential use to the rear would be minimized due to the retaining wall, differences in grade, and landscaping.
- C-3. The project is subject to the City's Outdoor Lighting requirements contained with Section 20.30.070 of the Zoning Code.
- C-4. The relocated 125-square-foot outdoor dining area of the existing food use would be covered by the office addition above and would be screened and noise attenuated from the existing adjacent residential use to the rear due to the difference in grade.
- C-5. The specialty food use and the proposed general office would not maintain late hours as defined by the Zoning Code to be later than 11:00 p.m.
- C-6. Roof-top mechanical equipment would be fully enclosed within an equipment screen and would not be visible from the residences above. The rooftop

- mechanical equipment enclosure has been located at the center of the commercial building to minimize the bulk of the building as viewed from East Coast Highway.
- C-7. Tenant improvements to the new commercial component of the development will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Conditional Use Permit – General Findings

2. A conditional use permit is requested to allow off-site parking for the commercial development at 3900 East Coast Highway to be located on the adjacent residential property at 3928 East Coast Highway and to reduce the off-street parking requirement to two guest spaces for the six residential units where the Zoning Code requires three spaces. In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a conditional use permit are set forth:

Finding

A. The use is consistent with the General Plan and any applicable specific plan:

Facts in Support of Finding

- A-1. The proposed detached residential condominiums are consistent with the RM General Plan Land Use Element designation.
- A-2. The proposed general office and food uses within the commercial component are consistent with the CC General Plan land use designation.
- A-3. Land Use Policy LU6.20.3 (Expanded Parking) for Corona Del Mar seeks to accommodate the redevelopment of residential parcels immediately adjoining commercial uses that front onto Coast Highway for ground level parking, provided that adequate buffers are incorporated to prevent impacts on adjoining residential uses. The proposed project requests utilizes commercial parking on a residential lota shared parking orientation that is consistent with the policy overview for the Corona Del Mar corridor. Adequate walls and landscape buffers will be provided to clearly delineate the change of uses along the Coast Highway frontage.
- A-4. The subject properties are not part of a specific plan area.

Finding

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:

- B-1. The proposed detached residential condominiums are permitted uses within the RM zoning district.
- B-2. The proposed general office and food uses within the commercial component are consistent with the CC zoning district.
- B-3. The required number of parking spaces to accommodate the new commercial development will be provided in thea-shared parking situation-lot that crossesacross the commercial property and the adjacent residential property at 3928 East Coast Highway. The proposed parking lot complies with the requirements as provided in Section 20.40.080 (Parking for Nonresidential Uses in Residential Zoning Districts), which requires the parking area to be designed to be compatible with and to not fragment the adjacent neighborhood, located within a reasonable walking distance to the use it is intended to serve, and to not be detrimental or injurious to property and improvements in the neighborhood.
- B-4. The waiver of one residential guest parking space complies with the limitations and permitted standards established by Section 20.40.110 (Adjustments to Off-Street Parking Requirements) of the Zoning Code to allow the approval of a conditional use permit to reduce the off-street parking requirement.

Finding

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:

Facts in Support of Finding

- C-1. All of the required parking for the additional commercial development would be provided within close proximity and in an accessible manner for patrons at 3900 East Coast Highway.
- C-2. The ground level parking lot is intended to serve the parking demands of the proposed commercial office floor area.; however, parking will be unrestricted so as to allow for shared parking with the existing food use and guest parking for the residential components. During the daytime, commercial parking demand outweighs residential parking demand. Therefore, the spaces provided within the ground level parking lot should be set aside exclusively for commercial use. Residential guest parking can be accommodated on the street, if needed.
- C-3. The residential users will have direct access to the commercial site and parking lot through a secured gate, but would be adequately buffered from the parking lot activity by solid 6-foot-high block walls, landscaping buffers, and minimal windows designed facing the parking lot.

- C-4. The project has been reviewed and found to be compliant with the parking area requirements and landscaping standards as provided in Section 20.40.070 (Development Standards for Parking Areas) and the outdoor lighting standards in Section 20.30.070 (Outdoor Lighting).
- C-5. The subterranean parking structure for the residential component includes 12 resident parking spaces and two guest parking spaces. Additional resident guest parking spaces can be accommodated with the five on-street parking spaces proposed in front of the development on East Coast Highway, three of which would be newly created spaces.

Finding

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:

Facts in Support of Finding

- D-1. The proposed parking lot provides adequate vehicle circulation and parking spaces for patrons.
- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided.
- D-3. The development of the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.
- <u>D-4.</u> Three additional on-street parking spaces are provided as a result of the proposed development.
- <u>D-5.</u> The subterranean parking structure level will be redesigned to accommodate an adequate handicap van accessible guest parking space.

Finding

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

- E-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
- E-2. The proposed commercial and residential development will serve the surrounding residential and retail community. This will revitalize the project site and provide an economic opportunity for the property owner to improve the visual character of East Coast Highway, a major thoroughfare through Corona Del Mar.
- E-3. The proposed parking lot configuration with two guest parking spaces in addition to nearby on-street spaces for the residential uses is adequate to accommodate the parking demand for visitors.

Conditional Use Permit- Additional Findings for Off-Site Parking

3. Pursuant to Section 20.40.100 of the Zoning Code, off-street parking on a separate lot from the project site also requires the approval of a conditional use permit. In addition to the standard conditional use permit findings, approval of off-site parking is subject to specific findings. The following findings and facts in support of such findings are set forth:

Finding

A. The parking facility is located within a convenient distance to the use it is intended to serve.

Facts in Support of Finding

A-1. The off-site parking lot, located immediately adjacent to the subject property, is essentially on-site.

Finding

B On-street parking is not being counted towards meeting parking requirements.

Facts in Support of Finding

- B-1. The nine parking spaces required to accommodate the additional commercial development are provided entirely within the parking lot.
- B-2. The enhancement of public improvements and parking are identified as an opportunity for change within Land Use Policy LU3.3 of the General Plan. The proposed project would close an existing driveway on 3928 East Coast Highway and provide additional on-street parking available to the public.

Finding

C Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.

Facts in Support of Finding

- C-1. The Traffic Engineer has reviewed and approved the configuration of the new parking lot extension and proposed changes to the existing parking lot, and has determined that the parking lot design will not create an undue traffic hazard in the surrounding area.
- C-2. The design consolidates three driveways into two driveways, thereby reducing potential conflicts and increasing vehicular safety along East Coast Highway.

Finding

D The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

Facts in Support of Finding

D1. Both of the commercial and residential components of the project site are currently owned in common across six legal lots. The proposed tract map would result in two new lots with commercial development on one and the six-unit residential condominiums on the second. As a condition of approval, the homeowner's association for the condominium development and the property owner of the commercial property will be required to enter into a reciprocal parking agreement for the joint—use of the 10-space ground level parking lot; therefore, the parking facility will remain available, marked, and maintained as intended.

Modification Permit

4. A modification permit is requested to allow construction of a retaining wall at a maximum height of 17 feet 2 inches from the finished grade that is located at the northwesterly corner of the lot located at 3900 East Coast Highway, where the Zoning Code limits the height to 8 feet maximum. An increase in height of a retaining wall may be requested per Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) of the Zoning Code. In accordance with Section 20.52.050 (Modification Permits), the Planning Commission must also make the following findings for approval of a modification permit:

Finding:

A. The requested modification will be compatible with existing development in the neighborhood.

- A-1. The view of the new retaining wall from East Coast Highway will be partially shielded by the second floor of the proposed commercial development.
- A-2. To minimize the massing and visual impact of the wall to the on-site users, a planter wall and trash enclosure is proposed to be located in front of the retaining wall and to improve its overall aesthetics.

Finding:

B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.

Facts in Support of Finding:

- B-1. The proposed commercial lot is constrained due to size and the steepness of the slope at northwesterly corner of the lot.
- B-2. The commercial lot is currently developed with a food use and the proposed development includes additional commercial office construction that would maximize the development potential identified by the General Plan floor area limit (0.75 FAR). The proposed retaining wall would accommodate the proposed development and make sufficient useable area available to provide required onsite parking for the new commercial office development.

Finding:

C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in Support of Finding:

C-1. Zoning Code regulations allow retaining walls at a maximum height of 8 feet with a minimum separation requirement of 6 feet between walls. Due to the topography of the project site, the construction of two terraced retaining walls that comply with this standard would result in a significant loss of site area necessary to provide on-site parking, vehicular circulation, and a trash enclosure for the new commercial development

Finding:

D. There are no alternatives to the Modification Permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.

Facts in Support of Finding:

- D-1. Without this approval, the applicant would be required to construct a series of 8-foot retaining walls with a 6-foot separation between walls. This would result in a significant loss of project site area that is necessary to provide required on-site parking for the proposed use.
- D-2. A terraced design that provides the required separation would not be less detrimental to existing residential property located to the rear at 408 Hazel Drive because they would not be able to see the face of the retaining wall from their vantage point due to the grade differential. Also, since the retaining wall is partially screened as viewed from East Coast Highway, the terraced design would not be readily visible from the public.
- D-3. The location of the retaining wall, at the rear of the subject property is appropriate given the proposed retaining wall would be adequately screened from the adjacent right-of-way. The retaining wall will provide a planter wall and trash enclosure in front of it to provide variation and articulation to improve the visual aesthetic of the retaining wall, consistent with the intent of the wall separation requirement.

Finding:

E. The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Facts in Support of Finding:

- E-1. The proposed retaining wall would provide a wrought iron guardrail for safety on the higher side of the property on the adjacent commercial and residential properties.
- E-2. The highest point of the retaining wall is near the northwest corner of the lot and is screened by the proposed commercial building as viewed from Coast Highway. Also, the retaining wall drops approximately 8 feet over a distance of 16 feet 6 inches, minimizing the height of the wall as the existing grade drops so that the visual impact of the wall is reduced.

E-3. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development. The portion of the property at 3900 East Coast Highway where the retaining wall is proposed was previously an alley that has recently been vacated by the City and granted to the property owner of 3900 East Coast Highway.

Variance

5. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area where a 20-foot setback is required. In accordance with Section 20.52.090.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of a variance are set forth:

Finding:

A. That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.

Facts in Support of Finding:

- A-1. The subject property is a wide (approx. 165 feet), but shallow lot (approx. 91 feet). The shallowness of the lot creates a design constraint for developing the site to its maximum allowed density of eight dwelling units, while still providing for required parking, vehicular circulation, open space, and the required setbacks. Due to these constraints, the applicant is only proposing to develop a total of six dwelling units but is requesting the ability to encroach five feet into the front 20-foot setback, similar to other developed RM lots in the vicinity.
- A-2. A 20-foot setback, corresponding buildable area, and resulting floor area limit are not appropriate for this property based on a review of the development pattern of adjacent multi-unit residential developments east of the project site that also front onto East Coast Highway.

Finding:

B. That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Facts in Support of Finding:

B-1. Immediately to the east of the subject property is a large 18-unit residential condominium complex (401 Seaward Rd.) that maintains a 15-foot front setback adjacent to East Coast Highway and to Seaward Road. This property is located

- on a one acre lot and is permitted a much larger floor area limit of 1.75 (instead of 1.5).
- B-2. Further east are several RM-6000 zoned lots (4104-4348 Shorecrest Ln.) that also maintain 15-foot front setbacks adjacent to East Coast Highway. These lots are not subject to a floor area limit ratio, but rather are limited to a 60 percent maximum lot coverage requirement.
- B-3. The setbacks and allowed floor area for nearby multi-unit developments are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback and resulting floor area limit would deprive the subject property of privileges enjoyed by nearby RM lots.
- B-4. Granting of the variance would allow the applicant to develop a multi-unit residential development utilizing similar setbacks and to a more reasonable floor area limit consistent with other multi-unit residential developments in the area.

Finding:

C. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.

Facts in Support of Finding:

C-1. The 18-unit condominium complex to the east is located on a larger one acre lot and is permitted a larger floor area limit of 1.75 times the buildable area (instead of 1.5). If the subject property were allowed a similar 1.75 floor area limit, the floor area limit would be 14,719 square feet, which is larger than the 13,703 square feet proposed. Also, the RM-6000 zoned lots further east are not subject to a floor area limit ratio, but rather are regulated by a 60 percent maximum lot coverage requirement. For comparison, the proposed lot coverage of the residential development is only 38 percent. In both these examples of nearby RM lots, the setbacks, buildable area, and total allowed floor areas are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback, buildable area, and resulting floor area limit would deprive the subject property of privileges enjoyed by nearby RM lots.

Finding:

D. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

- D-1. The size of the proposed residential development would be in scale with nearby multi-unit residential developments located on East Coast Highway and Shorecrest Lane.
- D-2. The granting of the variance would not constitute a special privilege inconsistent with the limitations upon other properties zoned RM as it allows the property owner to maintain equity with other multiple-unit developments along East Coast Highway.

Finding:

E. That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

- E-1. The 5-foot encroachment into the 20-foot setback would not be detrimental to the City or result in a hazard to the existing community or future residents of the project. The project would provide a 15-foot front setback to the street, which is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- E-2. Trees and shrubs will be planted within the 15-foot front setback to act as a buffer and soften the visual impact along the East Coast Highway frontage.
- E-3. The approval of this Variance is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.
- E-4. The proposed 15-foot setback for the residential structures would be consistent with the development pattern of the multi-unit developments to the east and compatible with the commercial lots to the west which so not have front setback requirements.
- E-5. Of the 1,100 square feet of additional floor area that the applicant is requesting above the maximum floor area limit (based on a buildable area utilizing a 20-foot setback), 1,018 square feet of that floor area is located below grade within the private garage area that is counted towards gross floor area and garage stairs. Therefore, this additional floor area is predominately below grade and does not add significant bulk or mass to the development as compared to what normally be allowed to be developed above grade using the 20-foot setback and resulting floor area limit.

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

- F-1. The intent of the front setback is to provide adequate separation for light, air, privacy and open space adjacent to the street. In this case, the project would provide a 15-foot front setback to the street, which is consistent with the front setbacks of the other RM zoned lots east. Fifteen feet is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- F-2. The subject property is designated RM by the Land Use Element of the General Plan and zoned RM. Both designations are intended primarily for multi-family residential development containing attached or detached dwelling units. The subject property is entitled for the development of eight dwelling units where six are proposed. Approval of the Variance will not affect residential density.
- F-3. The subject property is not located within a specific plan area.
- F-4. The overall design, based upon the proposed plans, meets residential design criteria provided within Section 20.48.180.B.2 (Design Criteria) by avoiding long unarticulated walls and providing architectural treatment of all elevations.

Tentative Tract Map

6. A tentative tract map is requested for residential condominium purposes, to create six airspace condominium units. The map would also serve to consolidate five lots and portions of a vacated alley into two lots. In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of a tentative tract map are set forth:

Finding:

A. That the proposed map and the design or improvements of the subdivision are consistent with General Plan and any applicable specific plan, and with the applicable provisions of the Subdivision Map Act and the City Subdivision Code.

Facts in Support of Finding:

- A-1. The project is consistent with the Commercial Corridor and Multiple Unit Residential General Plan designations of the project site.
- A-2. The Public Works Department has reviewed the proposed tentative map and found it consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

B. That the site is physically suitable for the type and density of development.

Facts in Support of Finding:

- B-1. The residential portion of the project site is currently a vacant paved/gravel lot and the commercial portion of the project site is currently developed with a 535-square-foot delicatessen.
- B-2. The site where construction will occur is relatively flat and based on the geologic investigation, the site is safe and suitable for development. The subject property has been placed with a significant amount of fill to provide a generally level site perched above the neighboring descending ravine. The fills encountered appear to be dense and compacted to acceptable levels. Expansive soils were encountered and the soils report recommends special attention be given to the project design and maintenance in compliance with Expansive Soil Guidelines.
- B-3. A preliminary Acoustical Study prepared for the project estimates that future traffic noise exposure will be 72.5 dB CNEL to the nearest facades to East Coast Highway. All multi-family projects must comply with the State of California's noise standards that specify that the intrusion of noise from exterior sources (such as traffic) shall not exceed a CNEL of 45 dB within the interior of any habitable space. This is also consistent with the City's interior noise standards established in the General Plan Noise Element, including Policy N1.1, N1.2, and N1.5. The Acoustical Study concludes that with appropriate noise control measures incorporated into the design of the proposed project (e.g., ventilation and air conditioning, weather stripping, increased sound-rated doors, windows, and wall finishes, etc.), no significant noise impacts will occur and the interior noise levels would comply with the City and State interior noise standard of 45 dB CNEL for residential units.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

- C-1. The portion of the project site to be developed does not support any environmental resources as indicated in the jurisdictional delineation prepared for the project. The project would not require discharge of fill into areas subject to Army Corp of Engineers, California Department of Fish and Game, or California Coastal Commission jurisdiction within the Buck Gully drainage. As such, there would be no significant impacts to the Buck Gully drainage associated with the project.
- C-2. Portions of the Buck Gully drainage are within areas that could be potentially affected by fuel modification activities, including cutting of vegetation. The jurisdictional delineation concludes that alkali bulbrush and southern cattail are growing in the stream channel and account for minimal biomass and would not likely require removal or thinning, as they pose no fire risk or theat. As such, there would be no impacts to wetland vegetation associated with the project.

Finding:

D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Facts in Support of Finding:

- D-1. The project consists of six residential units and commercial development at 0.75 floor area ratio as allowed by the Zoning Code and the General Plan.
- D-2. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.
- D-3. All construction for the project will comply with Building, Public Works, and Fire Codes. Public improvements will be required of the developer per Section 19.28.10 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

- E-1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
- E-2. Public improvements will be required of the applicant per the Municipal Code and the Subdivision Map Act.
- E-3. An existing 7.5-foot-wide utilities easement at the rear of the two lots will be retained. An approximate 15-foot-wide access and utilities easement located along the eastern side of the residential lot that is no longer needed would be vacated. An existing slope and drainage easement over the southeasterly corner of the residential lot would also be vacated and replaced with a new variable width storm drain easement. Southern California Edison power lines running in the rear of the property will be re-routed and placed underground.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

F-1. The site is not subject to a Williamson Act contract.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

G-1. The subject property is not located within the boundaries of a specific plan.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

- H-1. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate.
- H-2. The Newport Beach Building Division will enforce Title 24 compliance through the plan check and field inspection processes for the construction of any future proposed residences.

Finding:

I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.

Facts in Support of Finding:

I-1. There are no existing dwelling units on the project site. Rather the proposed project includes the construction of six new condominium units to contribute to the City's share of the regional housing need. The applicant will be responsible for the payment of appropriate fair share, park, and housing in-lieu fees for the development of these new dwelling units.

Finding:

J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

Facts in Support of Finding:

- J-1. Waste discharge will be directed into the existing sewer system and will not violate Regional Water Quality Control Board (RWQCB) requirements.
- J-2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

K-1. The project site is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby approves Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Variance No. VA2012-002, and Tentative Tract Map No. NT2012-001(PA2012-061) subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This Site Development Review, Conditional Use Permit, Modification Permit, and Variance actions shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
- 3. This Tentative Tract Map action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF JANUARY, 2013.

AYES:
NOES:
ABSTAIN:
ABSENT:
BY: Michael Toerge, Chairman
BY: Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

- 1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
- Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002.
- 5. <u>Prior to the issuance of a building permit</u>, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 6. <u>Prior to the issuance of building permits</u>, Fair Share Traffic Fees shall be paid for the new dwelling units and commercial floor area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.
- 7. Prior to issuance of building permits, an in-lieu housing fee for six dwelling units (currently \$20,513.00 per new additional dwelling unit) shall be paid in accordance with City Council Resolution No. 2010-44 of the Newport Beach Municipal Code.
- 8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
- 9. This approval may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 10. The existing food use shall continue operating in compliance with the conditions of approval of Specialty Food Permit No. 38. Any intensification of use shall require the application of a new conditional or minor use permit.

- 11. The existing power poles and overhead power lines located at the rear of the property shall be removed and the power lines shall be undergrounded.
- 12. Flat roof portions of the commercial building shall be constructed to meet "cool roofs" standards for energy efficiency; however, the color and material shall not result in glare as viewed from the residences above. No mechanical equipment shall be permitted on the roof, except within the designated mechanical well and shall not be visible from East Coast Highway or the adjacent residential properties.
- 13. The floor plans and building envelopes for each residential unit are approved as precise plans, unless revisions are approved by the Community Development Director. Future floor area additions to the building envelopes shall be prohibited. The proposed open patio and deck areas for each unit shall not be permitted to be enclosed and the landscape and common open space areas proposed throughout the development site shall be preserved.
- 14. A total of 10 parking spaces shall be provided within the ground level parking lot as illustrated on the approved plans and shall be available for use by guests of the residential tenants and commercial tenants and customers only. Signage shall be provided enforcing said restrictions.
- 15. All employees of the commercial building are required to park on site.
- 16. The shared 10-space parking lot shall be used for the parking of passenger vehicles only, with the exception of temporary parking for the loading and unloading of commercial and residential delivery trucks.
 - 17. The subterranean parking structure shall be redesigned to provide a total of two guest parking spaces including one handicap van accessible space with a publicly accessible elevator.
- 1. Commercial overnight parking within the shared 10-space parking lot shall be prohibited. Residential guest parking overnight is permitted.
- 17.18. The future homeowner's association for the condominium development and the property owner of the commercial property shall enter into a reciprocal parking and access agreement and parking management plan for the joint use of the 10-space ground level parking lot ensuring the permanently availability of parking. The agreement, approved as to form by the City Attorney's Office, shall be recorded prior to the issuance of the Certificate of Occupancy or final of building permits.
- 18.19. No signs, other than signs designating entrances, exits, and conditions of use shall be maintained in the shared parking lot. Signs shall not exceed four square feet in area and five feet in height. The number and location shall be approved by the Community Development Director before installation.

- <u>19.20. Prior to the issuance of building permits,</u> documents/plans shall be submitted demonstrating compliance with the requirements of Chapter 14.17 (Water-Efficient Landscaping Ordinance) of the Municipal Code.
- 20.21. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- 21.22. Prior to the issuance of a building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
- 22.23. Prior to the final of building permits, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved landscape plan
- 23.24. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
- 24.25. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards
- 25.26. Prior to the issuance of building permits, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are one-foot-candle or less at all property lines. Higher lighting levels are subject to the review and approval of the Community Development Director where it can be shown to be in compliance with the purpose and intent of the Outdoor Lighting section of the Zoning Code.
- 26.27. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code and Water Quality Enforcement Division to confirm control of light and glare.

- 27.28. Separate trash and recycling dumpsters shall be provided for the residential use and the commercial use. All trash shall be stored within the buildings or within dumpsters for residential and commercial uses stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
- 28.29. Prior to the issuance of the certificate of occupancy or final of building permits of the residential units, the future homeowners association shall enter into an agreement with the property owner of the commercial property to allow the use of the trash enclosure and to establish the terms of use and refuse collection.
- 29.30. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
- 30.31. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way
- 31.32. Prior to the issuance of the certificate of occupancy or final of building permits of the residential units, the future homeowners association shall enter into an agreement with the property owner of the commercial property to allow the use of the trash enclosure and to establish the terms of use and refuse collection.
- 32.33. The exterior of the businesses shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
- 33.34. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to the Conditional Use Permit.
- 34.35. No outside paging system shall be utilized in conjunction with this development.
- 35.36. The operator of the commercial building shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by tenants, patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
- 36.37. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District

- 37.38. All exits shall remain free of obstructions and available for ingress and egress at all times.
- 38.39. No building permits may be issued until the appeal period has expired, unless otherwise approved by the Planning Division. Building permits for structures located across the existing property lines shall not be issued until the tract map has been recorded.
- 39.40. A copy of these conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 40.41. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Plaza Corona Del Mar including, but not limited to, the Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Site Development Review No. SD2012-001, Tentative Tract Map No. NT2012-001, and Variance No. VA2012-002 (PA2012-061). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

- 41.42. Fire flow shall be provided in accordance with N.B.F.D. Guideline B.01 "Determination of Required Fire Flow." The fire flow will determine the number of fire hydrants required for the project.
- 42.43. Structures shall meet the requirements of Chapter 7A of the California Building Code, as amended by the City of Newport Beach.
- 43.44. New and existing structures in the project will be required to have fire sprinklers. The sprinkler system shall be monitored by a UL certified alarm service company.
- 44.45. The end of the drive aisle of the shared parking lot shall be identified as a fire lane and marked as per N.B.F.D. Guideline C.01.
- 45.46. Trash enclosures shall be located at least 5 feet from structures, unless, fire sprinklers are provided in the trash enclosure/structure.

46.47. A fuel modification plan shall be required for all landscape and must be submitted to the Fire Department. All requirements from N.B.F.D. Guideline G.02 "Fuel Modification Plans and Maintenance Standard" must be met. As per Guideline G.02. tree species are not allowed within 10 feet of combustible structures.

Building Division Conditions

- 47.48. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, Cityadopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. The proposed residential dwelling units do not meet the definition of "townhouse" per CBC 202.
- 48.49. Full access compliance shall be demonstrated and provided in accordance with the February 8, 2012, Building Division letter, CBC 11A and CBC 11B at the time of permit application. The floor and seating plans submitted with the Project Review plans are for reference only. Subsequent plan changes may be required due to code changes prior to submittal for plan review and permitting. This project review does not constitute approval of the floor plans, parking, or other access compliance issues.
- 49.50. All sides of both the commercial and residential structures shall fully comply with the Special Fire Protection Area requirements at the time of permit submittal. These requirements may be found in CBC 7A, Newport Beach Municipal Code and related codes.
- 50.51. Prior to the issuance of building permits, a preliminary plan review meeting shall be scheduled with the Building Division.
- 51.52. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least 2 feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to five minutes for trucks and heavy equipment

Off-Site Impacts

Encourage car pooling for construction workers.

- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.
- 52.53. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
- 53.54. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
- 54.55. The construction and equipment staging area shall be located in the least visually prominent area on the site, or another site approved by the Community Development Director, and shall be properly maintained and/or screened to minimize potential unsightly conditions.
- 55.56. A 6-foot-high screen and security fence shall be placed around the construction site during construction.
- <u>56.57.</u> Construction equipment and materials shall be properly stored on the site when not in use.

Public Works Conditions

- 57.58. An encroachment permit is required for all work activities with the public right-of-way.
- 58.59. The parking lot layout shall comply with City Standard F#805-L-A&B and shall be approved by the Public Works Department prior to the issuance of building permits.

- 59.60. All improvements adjacent to the proposed driveway approaches shall comply with the City's sight distance requirement, City Standard 110-L.
- 60.61. In case of damage done to existing public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- 61.62. County Sanitation District fees shall be paid prior to the issuance of any building permits.
- 62.63. Prior to commencement of demolition and grading of the project, the applicant shall submit a construction management and delivery plan to be reviewed and approved by the Public Works Department. The plan shall include discussion of project phasing; parking arrangements for both sites during construction; anticipated haul routes and construction mitigation. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan.
- 63.64. Traffic control and truck route plans shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.
- 64.65. Each unit shall have a dedicated water service installed per STD-502-L or STD-503-L, depending on the size.
- 65.66. New and existing fire services, when required by Fire Department shall be protected by a City approved double check detector assembly and installed per STD-517-L.
- 66.67. New and existing commercial water meter(s) shall be protected by a City approved reduced pressure backflow assembly and installed per STD-520_L-A.
- 67.68. Landscaping lines shall have a dedicated meter and shall be protected by a dedicated City approved reduced pressure backflow assembly per STD-520-L-A.
- 68.69. The proposed driveway to the underground parking garage shall have a maximum slope of 15 percent and a maximum change of grade of 11 percent per City Standard #160-L-C.
- 69.70. Prior to the issuance of a Certificate of Occupancy for the proposed structures, all public improvements shall be constructed as required by Ordinance and these conditions of approval.

Tract Map Conditions

- 1. A Final Tract Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.
- 2. Prior to recordation of the Final Tract Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
- 3. <u>Prior to recordation of the Final Tract Map</u>, the applicant shall provide a bond/surety in order to guarantee completion of all required public improvements. The bond/surety shall be reviewed and approved by the Public Works Department.
- 4. The existing concrete curb, gutter, and sidewalk along the East Coast Highway frontage shall be reconstructed, per City Standards.
- 5. The unused driveway approaches shall be abandoned and reconstructed with full height curb, gutter, and sidewalk per City Standard #165-L.
- 6. Proposed driveway approaches shall be constructed per City Standard #162-L.
- 7. The proposed storm drain relocation shall be subject to review and approval by the Public Works Department.
- 8. A variable width storm drain easement measured 5 feet from the westerly side of the centerline of the proposed new storm drain location to the easterly property line shall be granted to the City.
- 9. New 36-inch box street trees will be required to be planted on East Coast Highway. The designated street tree for this segment of East Coast Highway is the King Palm (Archontophoenix Cunningham). The number and location of these street trees are subject to approval by the Public Works Department and the Parks and Trees Division of the Municipal Operations Department.
- 10. <u>Prior to or concurrently with the recordation of the Final Tract Map</u>, an approximately 15-foot-wide access and utilities easement through the site adjacent to the eastern property line of 3928 East Coast Highway shall be vacated.

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- 11. <u>Prior to or concurrently with the recordation of the Final Tract Map</u>, an existing slope and drainage easement at the southeast portion of the subject property will be realigned so that it will not conflict with the location of proposed structures.
- 12. Applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand; a new 8-inch VCP sewer main shall be installed from the manhole at the Seaward Road/Coast Highway Intersection to the property's frontage. A new sewer main terminal cleanout shall be installed at the end of the new 8-inch BCP main per STD-400-L. Each unit shall have a dedicated sewer lateral with cleanouts installed per STD-406-L.
- 13. Prior to the recordation of the Final Tract Map, a park dedication fee for six dwelling units (currently \$26,125.00 per new additional dwelling unit) shall be paid in accordance with Chapter 19.52 of the Newport Beach Municipal Code. This fee shall be paid upon submittal of the map to the Public Works Department for plan check and deposited into the appropriate Service Area account as identified in the Recreation and Open Space Element of the General Plan.
- 14. The easterly property line of the proposed Lot 2 shall be revised on the Final Tract Map such that the prolongation of the easterly property line directly intersects with the rear property line (i.e. the approximately 82-square-foot notched area illustrated at the northeasterly corner of Lot 2 shall be made a part of Lot 2 and removed from Lot 1).

Draft Resolution for Denial

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING WITHOUT PREJUDICE CONDITIONAL USE PERMIT NO. UP2012-011, MODIFICATION PERMIT NO. MD2012-011, SITE DEVELOPMENT REVIEW NO. SD2012-001, TENTATIVE TRACT MAP NO. NT2012-001, AND VARIANCE NO. VA2012-002 FOR THE CONSTRUCTION OF A 2,160-SQUARE-FOOT COMMERCIAL OFFICE ADDITION AND SIX DWELLING UNITS LOCATED AT 3900 AND 3928 EAST COAST HIGHWAY (PA2010-061)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Marcelo E. Lische, the architect representing property owner, Magdi Hanna, with respect to property located at 3900 and 3928 East Coast Highway, and legally described as Lots 54, 55, 56, 57, 58, and portions of abandoned alley, Block B, Tract No. 673 requesting approval of a site development review, conditional use permit, modification permit, tentative tract map, and variance.
- 2. The project includes a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space shared surface parking lot. The following approvals are requested or required in order to implement the project as proposed:
 - a. A site development review to ensure compatibility with the site and surrounding land uses.
 - b. A conditional use permit to allow parking for nonresidential uses in a residential zoning district and to allow off-site parking.
 - c. A modification permit to allow a retaining wall up to 17 feet 2 inches in height, where the Zoning Code limits the height to 8 feet.
 - d. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area where a 20-foot setback is currently required.
 - e. A tentative tract map for condominium purposes and to consolidate five lots and portions of a vacated alley into two lots.
- 3. The subject property at 3900 East Coast Highway is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).

- 4. The subject property at 3928 East Coast Highway is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential (RM).
- 5. The subject properties are not located within the coastal zone.
- 6. A public hearing was held on December 6, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. The Planning Commission voted to continue the item to the January 3, 2013 meeting.
- 7. A public hearing was held on January 3, 2013, in the City Hall Council Chambers, 3300

 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code.

 Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach does hereby deny without prejudice Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Variance No. VA2012-002, and Tentative Tract Map No. NT2012-001(PA2012-061).
- This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
- 3. This Tentative Tract Map action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3^{RD} DAY OF JANUARY, 2013.
AYES:
NOES:
ABSTAIN:
ABSENT:
BY: Michael Toerge, Chairman
BY: Fred Ameri, Secretary

Planning Commission Minutes-December 6, 2012

ITEM NO. 3 Plaza Corona del Mar (PA2010-061) Site Location: 3900 and 3928 East Coast Highway

Assistant Planner Makana Nova presented details of the project addressing location, development standards, surrounding land uses, project components, floor area ratios for commercial districts, density requirements for residential uses, parking, existing conditions, consolidation of parcels, the vacated alley, proposed property lines, second-story addition, and existing curb configuration. She introduced the commercial component including the outdoor dining patio, addition of common and lobby areas, elevations, building height limits, parking for commercial properties, accessibility of parking, guest parking spaces, maintenance of adequate definition between the residential and commercial components and landscaping. She presented details regarding the proposed retaining wall and grade differentials, addition of planters and landscaping, and location of trash enclosures.

She presented details of the residential component addressing common open space areas, private open space areas, access to the units, subterranean garage, private garages for each unit, guest parking spaces, elevators, elevations, compliance with the height limit, variance required to establish a fifteen-foot setback along East Coast Highway and comparable floor areas. She addressed setback requirements, buildable areas, floor area limits, lot coverage and consistency with the adjacent developments relative to setbacks. Ms. Nova reported that regarding the variance, staff has considered the request and determined that it is consistent with the surrounding development pattern and that the lot coverage and floor-area limit area are also consistent. She noted that staff analyzed the project for CEQA and Coastal compliance and that the project is not located within the Coastal zone and does not have a land-use designation within the Coastal Land-Use Plan and addressed CEQA exemptions. She stated that the Commission has been provided with revised plans, a new copy of the bio-study and a draft resolution correcting grammatical errors.

Ms. Nova reported that the project is at the eastern entrance to Corona del Mar Village and that the property has been under-utilized for a long time. She concluded that staff believes the findings can be made in support of the project. She noted that staff has received no written correspondence regarding the project. There has been one inquiry requesting a staff report but neither in support or in opposition to the project.

Commissioner Tucker indicated he received comments regarding not needing more condominiums and complaining about additional traffic resulting from the project in the City. Ms. Nova clarified that comments were received from Jim Mosher.

Commissioner Tucker commented regarding documents governing reciprocal easements for parking and noted that the trash enclosure should be included in the document and that it should be clarified that each of the uses must have their own trash bins. He inquired about building over the existing Gallo's. Ms. Nova reported that the structure will be built over the existing Gallo's and that the exterior will be modified for consistency with the new structure.

Brief discussion followed regarding parking requirements and possible parking shortages.

Commissioner Tucker identified the need for commercial parking and the possibility of placing time limits on the guest parking spaces.

Chair Toerge invited the applicant and those interested to address the Commission on this item.

Marcelo Lische, Project Architect, addressed compliance with new Code requirements, previous approval of a specialty food use, conflicts with parking addressed through conditions of approval

(condition number 17), and limitation of hours for both uses for the shared parking. He noted that through the creation of CC&Rs the issue will be addressed as well.

Assistant City Attorney Leonie Mulvihill reported that the Commission could condition the matter either by a specific provision in the reciprocal easement agreement or within the CC&Rs restricting parking.

Magdi Hanna reported that originally, the project was going to be a car spa, but was prohibited because it was inconsistent with surrounding properties. He presented a brief history of the property and the intent of the proposed project.

Corona del Mar resident, Dan Purcell, addressed the vacated easement and noted that it is a lot of land to give away and has enabled the property owners to build larger units than they would have been able to do. He presented other options that would have been possible rather than giving away that land and encouraged maintaining the corridor view. He stated that there already is a development named Corona del Mar Plaza.

There being no others wishing to address the Commission, Chair Toerge closed the public hearing.

In response to an inquiry from Chair Toerge, Ms. Nova reported that the easement has already been vacated and that a portion was vacated at the last Council meeting. She noted that the portion contributed to the FAR for the proposed commercial development.

Ms. Nova introduced elevations of the residential portion of the project.

Chair Toerge re-opened the public hearing.

Mr. Lische explained the location of the fence, the separation between the building and the property line and addressed grading.

There being no others wishing to address the Commission, Chair Toerge closed the public hearing.

Chair Toerge addressed shared parking with the commercial uses and noted additional parking spaces are being added on the street. He encouraged restricting the use of the parking lot for commercial uses.

Discussion followed regarding the parking spaces required for the residential portion of the project.

Vice Chair Hillgren arrived at this juncture. (5:57 p.m.).

Commissioner Kramer stated that the project needs further consideration and thought, that the parking issue is problematic and inquired regarding the possibility of the applicant having to appear before the Planning Commission again for approval of design.

Ms. Nova stated that the applicant would not.

Commissioner Kramer was not satisfied with the data provided.

Commissioner Brown also addressed the parking issue.

Community Development Director Kimberly Brandt suggested that the item could be continued for additional information regarding the parking issue.

Vice Chair Hillgren noted that he was unable to hear the report and that if the Commission decides to take action at this time, he will abstain from voting.

Commissioner Tucker addressed the reciprocal access agreement for the joint use of the spaces but noted that the document lacks a maintenance protocol and felt that the mechanics on how it will work are unclear.

Discussion followed regarding a parking waiver of one parking space for residential and no residential parking on the commercial side.

Motion made by Chair Toerge and seconded by Commissioner Tucker and carried 6 - 0, to continue the project until the Planning Commission meeting of January 3, 2013.

Commissioner Kramer indicated that he will confer with staff after the meeting to clarify what he would like to project to address.

Commissioner Tucker requested clarifying some items within the conditions of approval including documenting easement agreements before issuance of a building permit/certificate of occupancy, indicating that each use gets the right to use one of the areas for the trash bin, exclusively and establishing a time limit for residential parking uses of the shared parking areas.

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker

NOES: None ABSTENTIONS: None ABSENT (Excused): Ameri

Public Comment Letters

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

From: Lady Dy < Lady.dy@sbcglobal.net>
Date: December 9, 2012, 4:19:03 PM PST
To: dcampagnolo@newportbeachca.gov

Subject: Planning Commission

Please carefully consider the impact of approval of a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space shared surface parking lot.

Parking and safety are already a concern. The ability for care to make a u-turn at Seaward already creates a dangerous situation. Add to that cars entering and exiting a garage and you have chaos.

D Fullerton

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

From: NewProp@aol.com [mailto:NewProp@aol.com]
Sent: Wednesday, December 05, 2012 8:32 AM

To: bhillgren@highrhodes.com; strataland@earthlink.net; ameri@rbf.com; jaymyers5@cox.net; korykramer@gmail.com; tucker@gtpcenters.com; tim-brown@sbcglobal.net; info@cdmra.org

Subject: Dec 6 Agenda Item: Plaza CdM Comments

Condos sounds like a ghastly idea. The PCH traffic through CdM is awful as is. What we love about CdM is that it is a low-residency town. Why ruin that? Just some greedy developer wanting to cash in, with no regard to the neighbors, I bet.

Liz Swiertz Newman 22 Skysail Drive CdM 92625

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

----Original Message----

From: I.N. Botnick [mailto:inbotnick@gmail.com]

Sent: Monday, December 03, 2012 6:55 PM

To: bhillgren@highrhodes.com; strataland@earthlink.net; ameri@rbf.com;

jaymyers5@cox.net; korykramer@gmail.com; tucker@gtpcenters.com;

tim-brown@sbcglobal.net; info@cdmra.org

Subject: Dec 6 Agenda Item: Plaza CdM Comments

I do not want building on that property because it can block my view. If view blocking is not a problem then all is ok to proceed.

Sent from my iPad

I.N. Botnick
510 Hazel Dr.
Corona Del Mar, CA 92625
(949) 285-8113

To: PLANNING_COMMISSION
Subject: ADDITIONAL MATERIALS RECEIVED

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

From: Charlie Hobbs [mailto:hobbs@ieee.org]
Sent: Monday, December 03, 2012 5:51 PM

To: bhillgren@highrhodes.com; strataland@earthlink.net; ameri@rbf.com; jaymyers5@cox.net; korykramer@gmail.com; tucker@gtpcenters.com; tim-brown@sbcglobal.net; info@cdmra.org

Subject: Dec 6 Agenda Item: Plaza CdM Comments

Traffic on Coast Highway in that area is already heavy enough without adding more Condos and retail stores.

Linder Hobbs 4701 Surrey Drive Corona Del Mar. Ca To: PLANNING_COMMISSION
Subject: ADDITIONAL MATERIALS RECEIVED

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

From: Dominic Boitano [mailto:domboitano@gmail.com]

Sent: Monday, December 03, 2012 5:26 PM

To: bhillgren@highrhodes.com; strataland@earthlink.net; ameri@rbf.com; jaymyers5@cox.net; korykramer@gmail.com; tucker@gtpcenters.com; tim-brown@sbcglobal.net; info@cdmra.org

Subject: Dec 6 Agenda Item: Plaza CdM Comments

Good evening. Unfortunately I cannot attend the PC meeting on Dec 6, however here are some comments after my quick review of the staff report.

- 1. The retaining wall in the NW corner of the property looks like it could turn into an eye sore. It would be great it could be reduced in height through revising the elevations of the project. At any height, it should be thoroughly screened with lush landscaping and other materials that would lessen the visual impact.
- 2. I am concerned that traffic on PCH could be impacted by the residents and commercial trips generated by this project. And I do not mean just because of additional trips, but rather the fact that traffic will have to merge with PCH. Would it help to consolidate the curb cuts into a single curb cut?
- 3. The existing building that houses the deli is old. The staff report seems to indicate this space is being saved, even with a substantial addition being added on top of the existing structure. It seems like this would be difficult to achieve for such an old building. Is it being brought up to code? What improvements are necessary to the existing structure? Why not demolish the existing structure and being a completely new building?
- 4. The project appears to drain directly into the creek. It would be good to make sure that all site drainage is being treated appropriately.

Thank you!

Dominic Boitano 831-521-6215 domboitano@gmail.com

Item No. 3c: Additional Materials Received Planning Commission December 6, 2012 Plaza Corona del Mar (PA2012-061)

From: Jones Gayle [mailto:gjones@snyderlangston.com]

Sent: Monday, December 03, 2012 5:18 PM

To: bhillgren@highrhodes.com; strataland@earthlink.net; ameri@rbf.com; jaymyers5@cox.net; korykramer@gmail.com; tucker@gtpcenters.com; tim-brown@sbcglobal.net; info@cdmra.org

Subject: Dec 6 Agenda Item: Plaza CdM Comments

One of these days, the owner should be allowed to building SOMETHING on this property. I suppose a smallish office building would be the best bet for the neighbors. Underground parking would be great, but this may not be economically feasible.

(Mrs.) Gayle Jones

Shore Cliffs

Note: I have replaced the coma after each address with a semi-colon; otherwise the e-mail will not successfully get transmitted.

Applicant's Description and Justification

Plaza del Mar, Inc.

3345 Newport Blvd, # 203, Newport Beach, CA 92663

Tel 949 723-2000 Fax 949 723-0500 e-mail magercan@aol.com

December 20, 2012

City of Newport Beach Planning Department Newport Blvd, Newport Beach, CA 92663

Ref: Plaza Corona del Mar Project Character of Gallo's Italian Deli

Dear Sirs:

Gallo's has been a local landmark since 1973. Three generations of clienteles have been served at Gallo's. I have been a witness to a grand mother telling a young girl with her that she used to bring the girls' mother to Gallo's when she was her age.

I personally live around the corner at 500 Hazel Dr., and feel that Gallo's is adding to the ambience of the old village. It is a unique eccentric old store with traditions that connects the present with the past.

We will leave the interior intact. However, we will add a handicap restroom and modify the exterior appearance to make it compatible with the rest of the Plaza CDM project.

Please note that if Gallo's were erased to be replaced by a brand new shiny store, it would be more economical. But then, it would loose all its character and become another Subway. It would also be a let down to many of loyal local customers, who got used to the store as it has always been. It is our duty to continue the traditions first started by Joe Gallo, in 1973.

Yours truly,

Magdi R. Hanna, P.E.

PLAZA CORONA DEL MAR, Mixed –Use Project 3900 & 3928 E. Coast Highway Corona del Mar, Ca. 92625

PROJECT REQUIREMENTS:

The proposed project requires **Planning Commission Major Review** for **Site Plan Review**, **CUP** (to allow parking for non residential uses in a residential zoning district and to allow approval of off-site parking), **Tentative Tract Map** (for Condominium purposes and to combine lots 55, 56, 57 & 58 into a single parcel, and the incorporation of a "paper alley" to Lot 2), **Modification Permit** (to request an increase in the height of the retaining wall at the NW corner Property line), **Alternative front setback Variance** for the residential portion of the project and **CDP** (Coastal Development Permit for the project located within the Coastal Zone).

The proposed project is consistent with the General Plan and Zoning Code. CC commercial for Lot 2 "Gallo's" and Office Building, and RM for Lot 1, multi-family residential

The project provides safe pedestrian and vehicular access, proper and water-efficient landscape planting in open space areas and proper use of the open space.

The project provides adequate and efficient use of the space in terms of mass, scale, aesthetics and relationship with neighboring properties.

The project does not affect or impact any significant "Public Views" per NBMC 20.30.100 The project will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood. The land developer also owns the lot west to the property, currently occupied by "Gallo's Deli". The proposed Tentative Parcel Map includes Parcel 1 (Residential Condominiums) and Parcel 2 (Gallo's Deli and Office Building).

To allow commercial parking in Lot 1 (residential) a **CUP** will be required. The proposed commercial parking is right next to "Gallo's" and the proposed Office building. None "Onstreet" parking is being counted towards meeting the parking requirements. The use of the parking facility will be permanently available, marked, and maintained for the use is intended to serve, and will not create undue traffic hazards or impacts in the surrounding area.

GENERAL PROJECT DESCRIPTION:

Formerly occupied by a Unocal Gas Station, the site has been vacant since 1992 and was subject of different studies for commercial uses including the later proposed Car Dealer in 1999.

The proposed Mixed Use Project consist of 6 detached-3 story Residential Condominiums with underground parking garage, and a new Office Building above the existing "Gallo's" Deli (to remain under Specialty Food Permit # 38).

The project is proposed to be built in 2 Phases: Phase #1 Condominiums, Phase #2, Office Building.

Each Residential Unit has an enclosed private 2 car garage within the underground parking. A private elevator connects the individual garages with each 3 story Unit above. One of the Units will be handicap accessible in compliance with ADA requirements. Handicap parking will be provided accordingly.

One Handicap parking stall for residential visitors will be provided at street level within the commercial parking lot. Proper signage will show exclusive use for the residential visitors. Also adequate general signage will establish hours of use for commercial parking (8:00 AM to 6:00 PM) and residential (6:00 PM to 8:00 AM) Given the size of the residential lot, basement access ramp and configuration, it will be very difficult to provide the required handicap visitors parking at the basement level. Plus it will require the addition of a full size ADA common elevator from the garage basement to the entry plaza for which there is no available room. The proposed solution of surface parking with proper signage will be efficient and comply with the City and Building Codes requirements.

The decision of creating 6 distinct detached Units (Townhome like) was made to break-up and reduce the building mass, avoiding the creation of a "Shoe Box" like massive design. The requested 15' front setback Variance and proper landscaping helps to soften-up the streetscape and create a smooth transition between the commercial and residential uses on Coast Highway. All neighboring residential uses in Coast highway have a 15' front setback.

The RM maximum allowable building height of 28'/ 33' allows developing detached 3 story units of about 2,000 SF each, creating a diverse and more interesting roof lines. Applicable building codes are: 2010 CBC-CMC-CPC-CEC and 2008 T-24 Energy Code, and California Green Code

Both Commercial and Residential Buildings will be Fully Sprinklered.

Building materials: parking garage basement will be poured in place concrete footings, slab, walls and lid, (Type 1-A construction) providing 3-HR separation with the units above (Type V-B construction).

The Commercial Building ("Gallo's" and Second Floor Office) will be Type V-B Construction.

Both Residential Condos and Office Building will be light gauge steel framing.

Architectural style for all buildings will be Soft Contemporary, with the incorporation of a warm color pallet.

Exterior materials will be smooth stucco and horizontal wood cedar siding. Exterior openings will be dual glaze anodized aluminum windows and doors. Balcony railings will be tempered glass. All exterior walls, balconies, decks and eaves will be 1-Hr. construction. Roofing will be Class "A" standing seam metal for the Condos and Class "A" Built-up low slope (1/4"/12") for the Office Building. Insulation values will comply with T-24 and Acoustic Study, R-19 for exterior walls and R-30 for roofs.

Note: Existing Gallo's Deli building to be refurbished outside with new smooth stucco and new dual-glaze aluminum windows to match Office building materials and color pallet. New Blue awning will be installed to identify Gallo's brand.

The proposed project will be a perfect fit and transition of uses, building massing, and density between all others surrounding the site, and will become the right missing link to complete the urban fabric and streetscape in the south end of Corona del Mar.

Marcelo E. Lische, Architect AIA

Project Plans



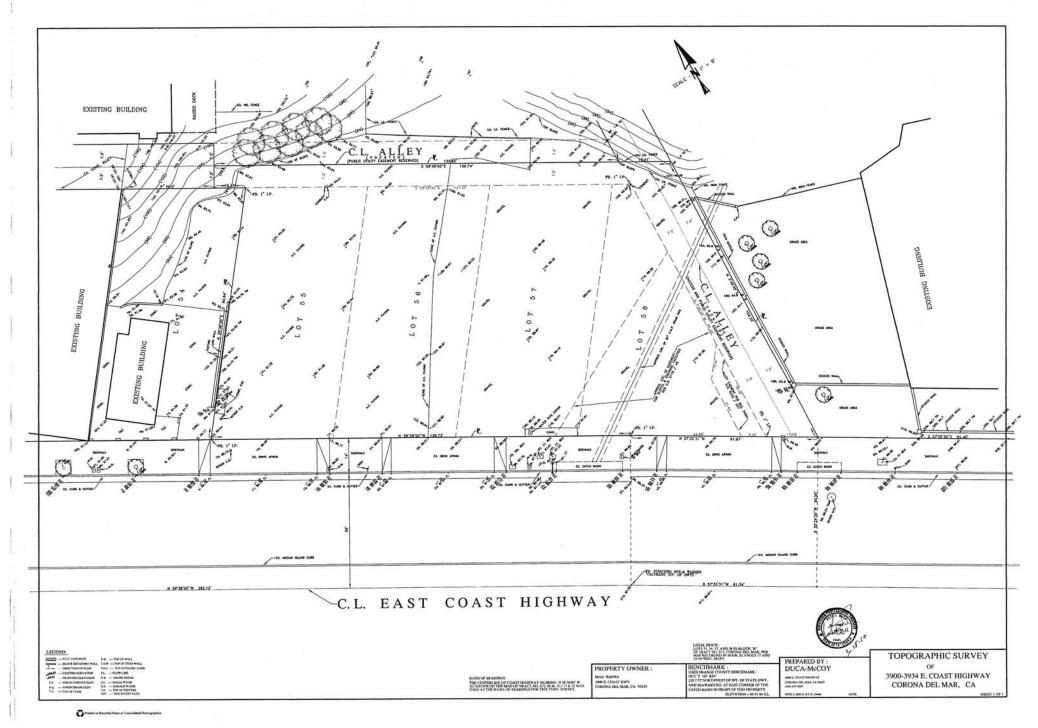
"PLAZA CORONA DEL MAR"

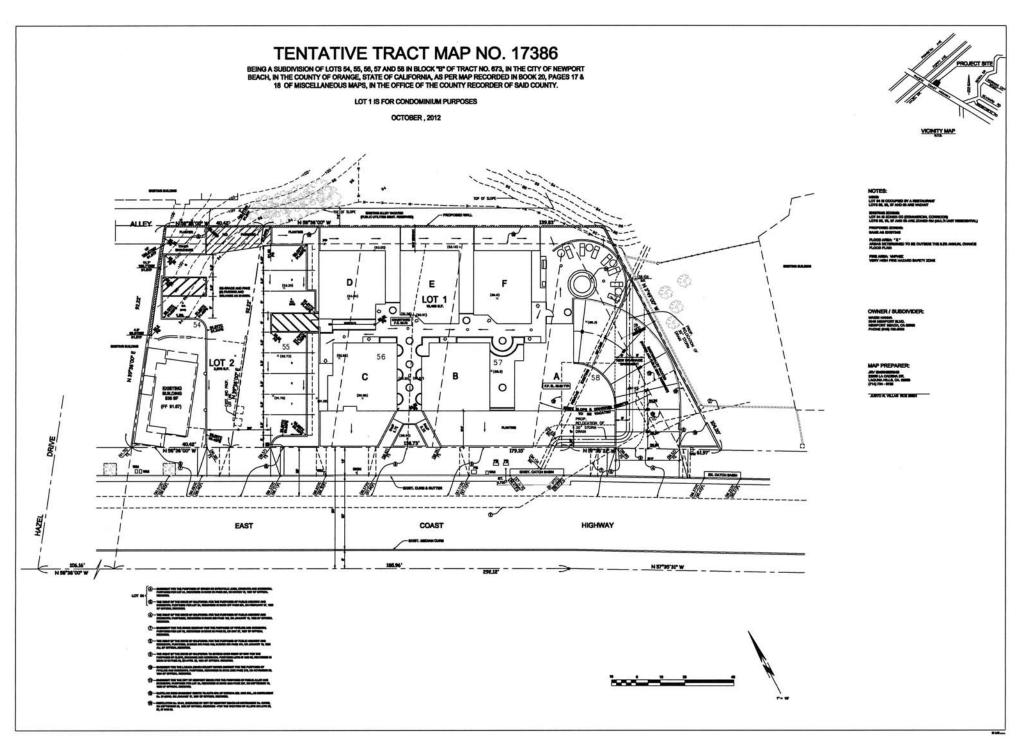
MIXED USE: COMMERCIAL / MULTI-FAMILY RESIDENTIAL

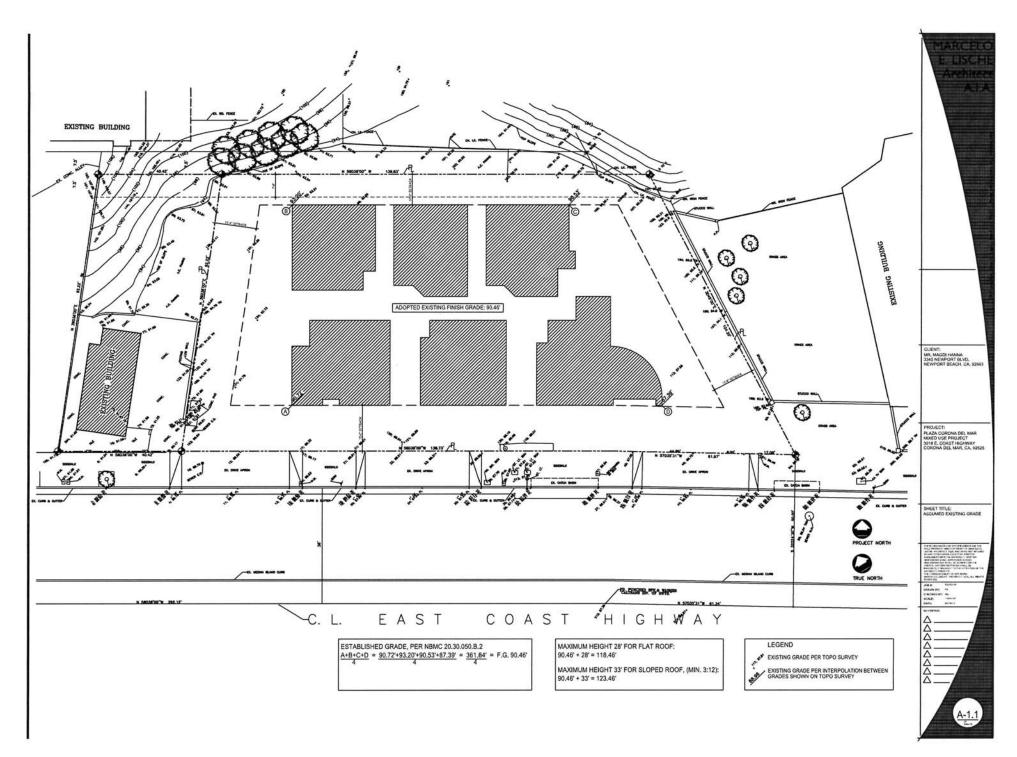
3900 / 3918 E. COAST HIGHWAY

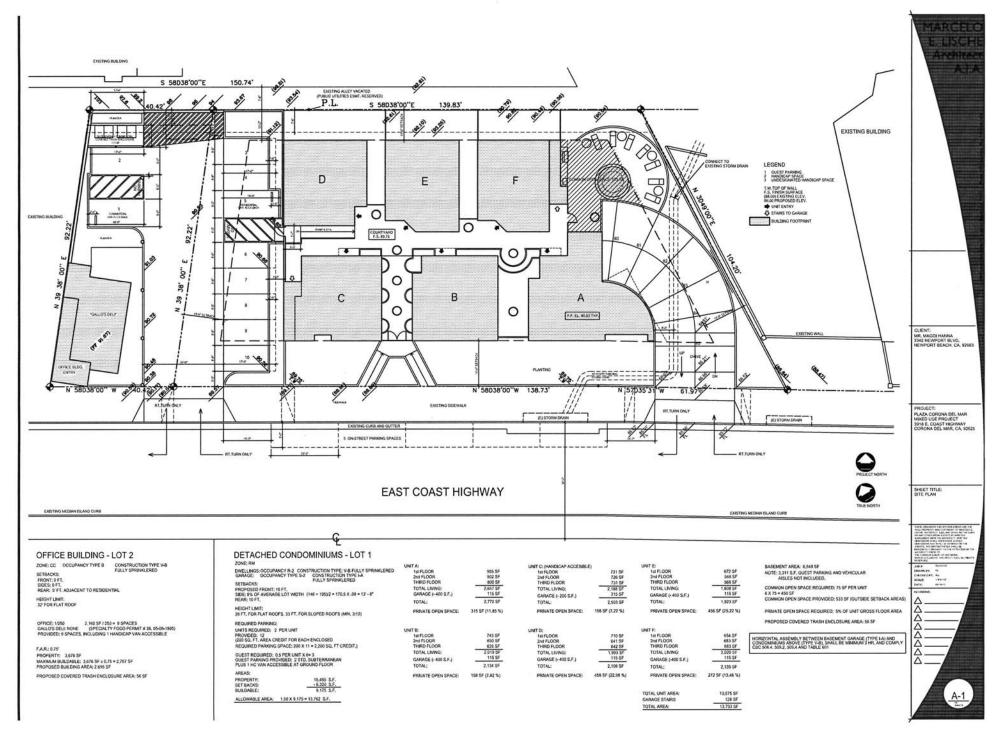
CORONA DEL MAR, CA. 92625

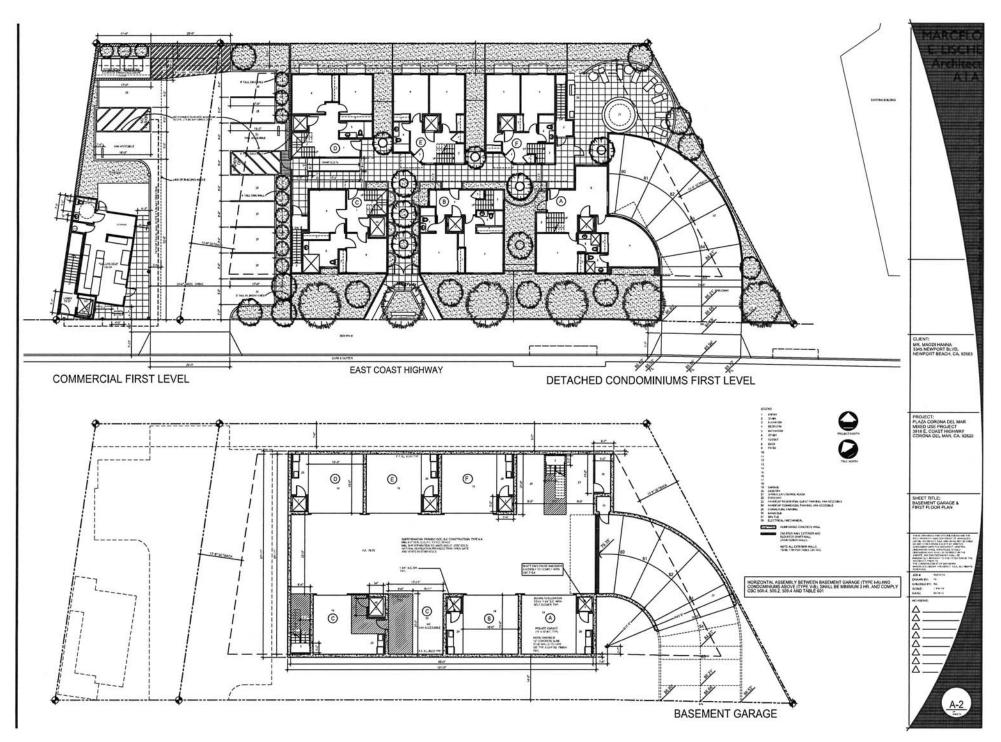
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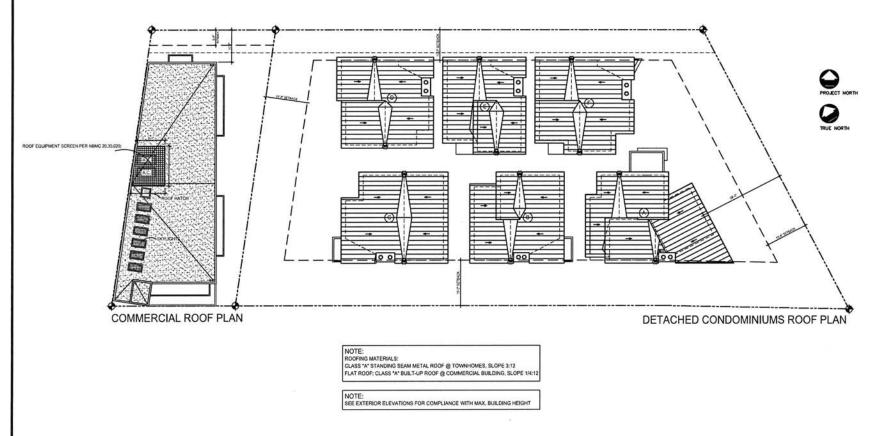




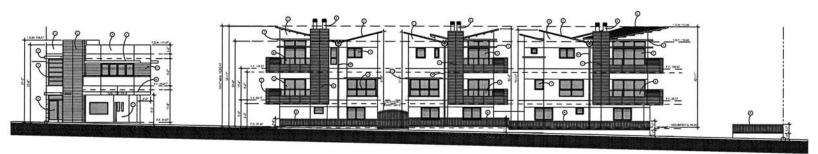








CLIENT: MR. MAGDI HANNA 3345 NEWPORT BLVD, NEWPORT BEACH, CA. 92863 PROJECT: PLAZA CORONA DEL MAR MIXED USE PROJECT 3018 E. COAST HIGHWAY CORONA DEL MAR, CA, 92625 SHEET TITLE:

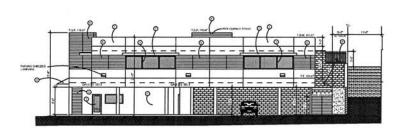


SOUTH ELEVATION (street front)

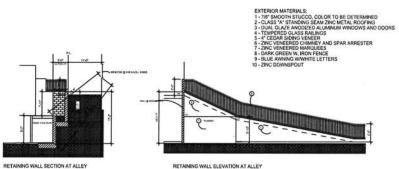


NORTH ELEVATION





OFFICE BUILDING EAST ELEVATION



RETAINING WALL ELEVATION AT ALLEY

CLIENT: MR. MAGDI HANNA 3345 NEWPORT BLVD. NEWPORT BEACH, CA. 92663

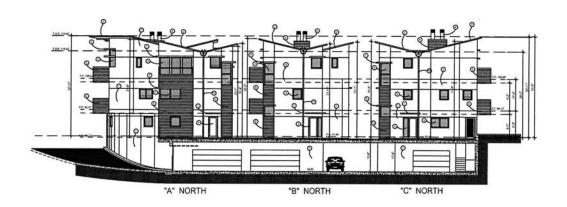
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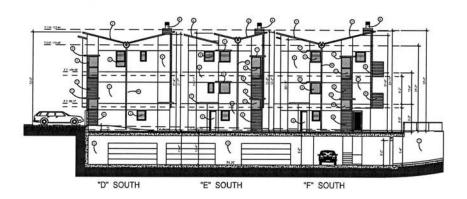
Architekt A.I.A

PROJECT: PLAZA CORONA DEL MAR MIXED USE PROJECT 3916 E. COAST HIGHWAY CORONA DEL MAR, CA, 92625

SHEET TITLE: EXTERIOR ELEVATIONS

A-5





BUILDINGS EXPOSED TO SPECIAL FIRE HAZARD ZONE NOTE: ALL EXTERIOR WALLS, DOORS AND WINDOWS TO BE THR ASSEMBLY BUILDINGS ARE FULLY SPRINKLERED

- EXTERIOR MATERIALS:

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 1 78" SMOOTH STUCCO, COLOR TO BE DETERMINED

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 4 TEMPERED GLASS RALINGS

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 5 40" CEQUAS SIGNINGS

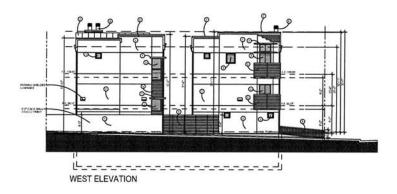
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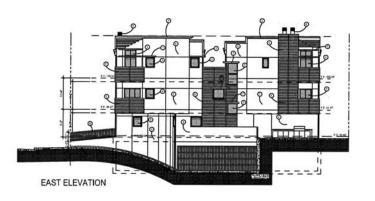
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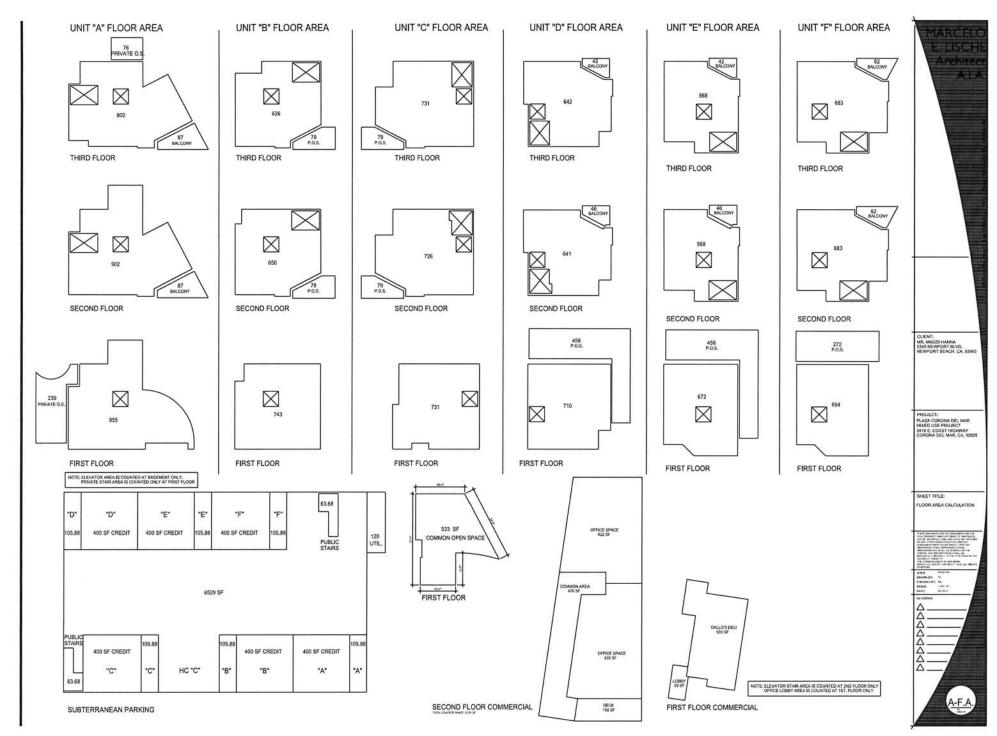
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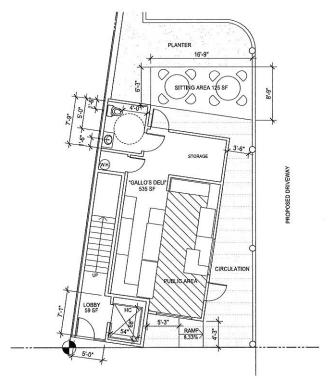
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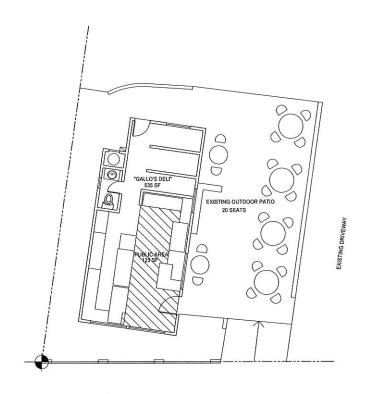


MARCELO E. LISCHE Architekt A.I.A CLIENT: MR, MAGDI HANNA 3345 NEWPORT BLVD, NEWPORT BEACH, CA, 92663 PROJECT: PLAZA CORONA DEL MAR MIXED USE PROJECT 3918 E. COAST HIGHWAY CORONA DEL MAR, CA. 92625 SHEET TITLE: EXTERIOR ELEVATIONS





PROPOSED GALLO'S SEATING



EXISTING GALLO'S SEATING



GENERAL GRADING SPECIFICATION

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PRELIMINARY GRADING & **DRAINAGE PLAN**

FOR

3900 E. COAST HIGHWAY



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PRIVATE ENGINEER'S NOTICE TO CONTRACTOR

EARTHWORK QUANTITIES:

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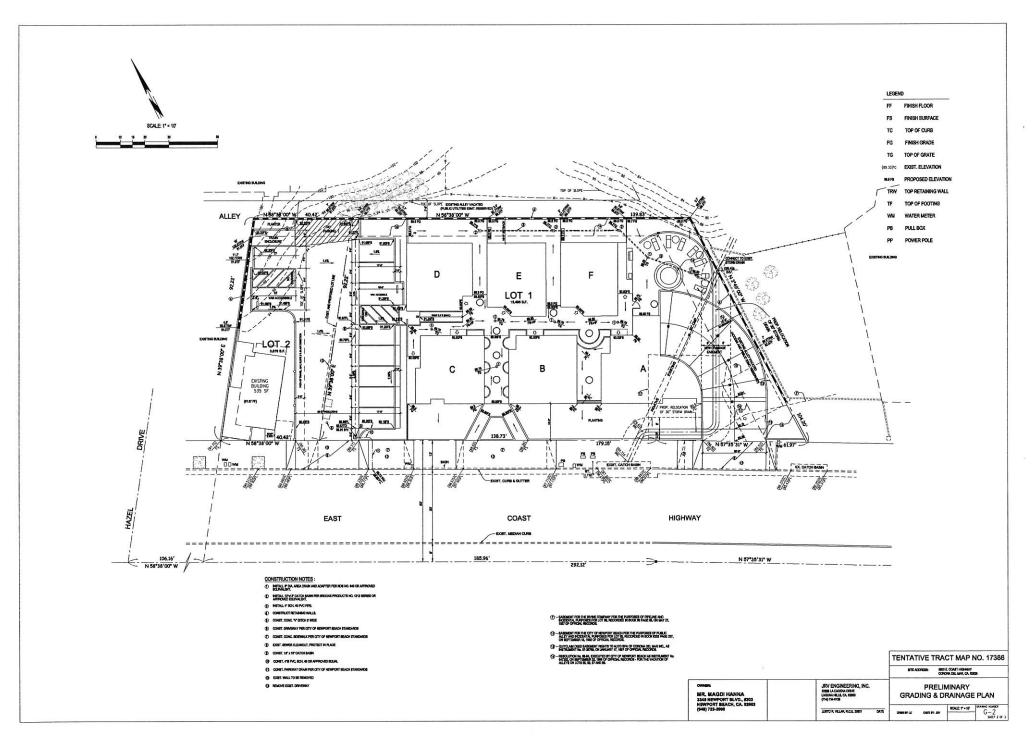
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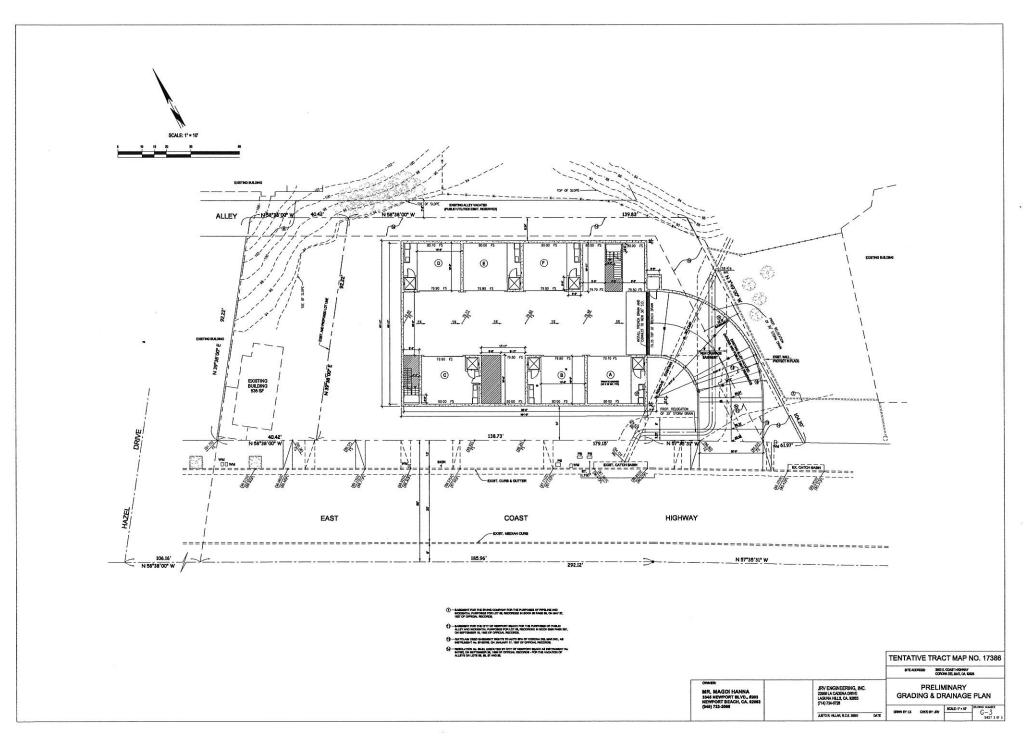
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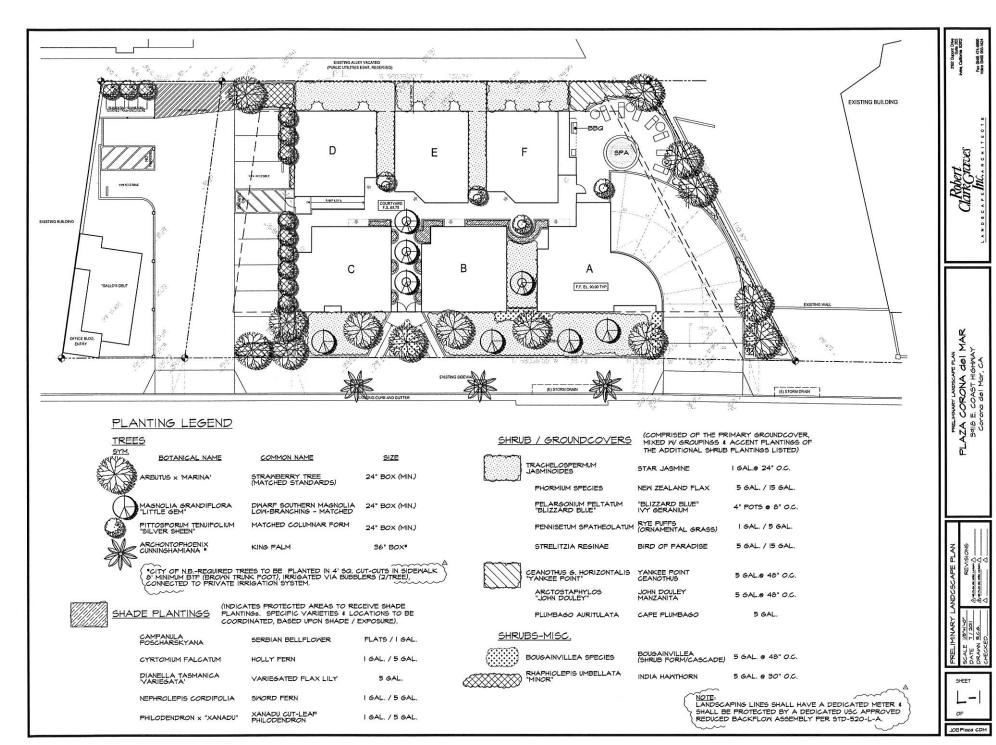
PRELIMINARY **GRADING & DRAINAGE PLAN** TITLE SHEET

MR. MAGDI HANNA 3343 NEWPORT BLVD., \$203 NEWPORT BEACH, CA. \$2865 PHONE: 5840 773-2000

BMM NEUL OND NEW BOLET-W







ADDITIONAL MATERIALS RECEIVED

Plaza Corona del Mar







Planning Commission, Public Hearing 3900 and 3928 East Coast Highway January 3, 2013 STAFF PRESENTATION PA2010-061



Aerial Photograph





Project Overview



Mixed-Use Development

- 6 detached dwelling above a subterranean parking structure
- 2,160 SF office addition above existing 535 SF specialty food use
- 10-space shared parking lot

Requested Applications (PA2010-061)

- Site Development Review No. SD2012-001
- Conditional Use Permit No. UP2012-011
- Modification Permit No. MD2012-011
- Tentative Tract Map No. NT2012-001
- Variance No. VA2012-007

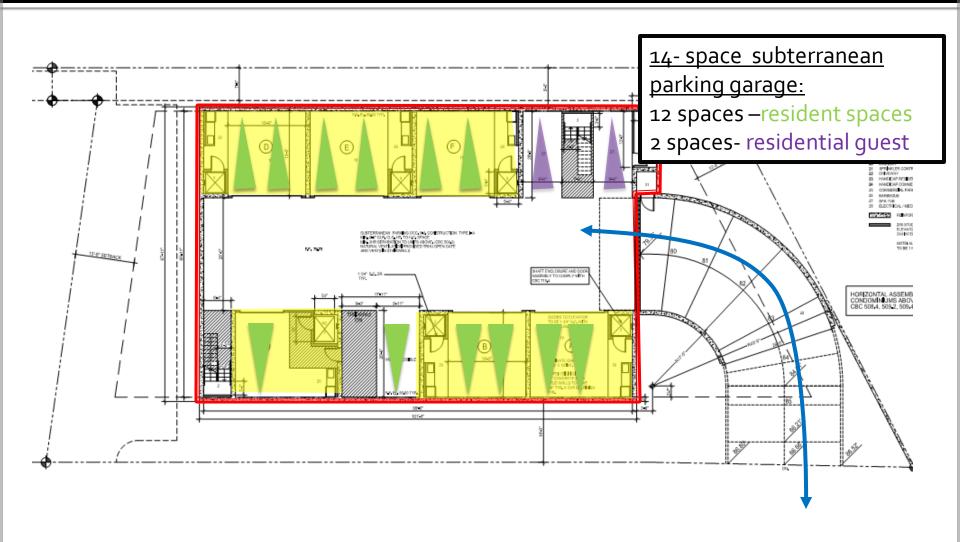
Continued from Dec. 6th



- Concerns with shared use of parking lot
 - Possibility of waiving 1 residential guest space
- Requested additional details regarding architectural style and materials
- Clarification regarding the retention of the existing Gallo's structure

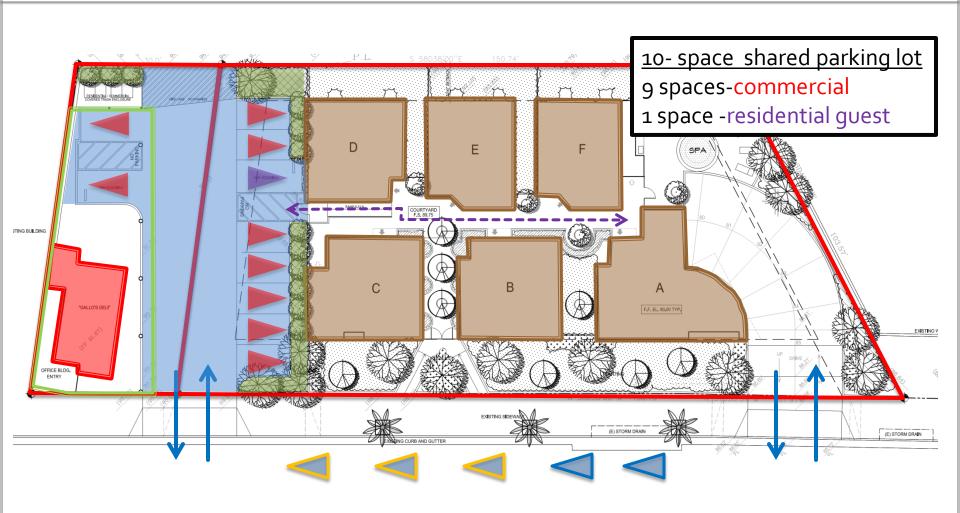
Proposed Parking Configuration Residential Basement





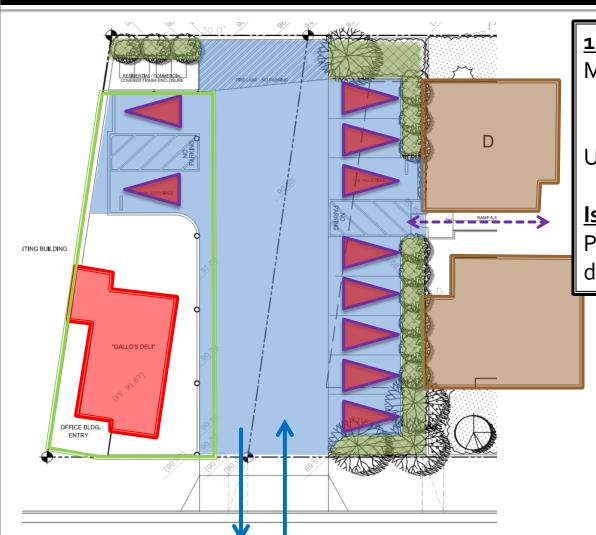
Proposed Parking Configuration Ground-Level Parking Lot





Originally Proposed Unrestricted Shared Parking





10 space shared parking lot

Meets parking requirements

- •9 spaces commercial
- •1 space residential guest

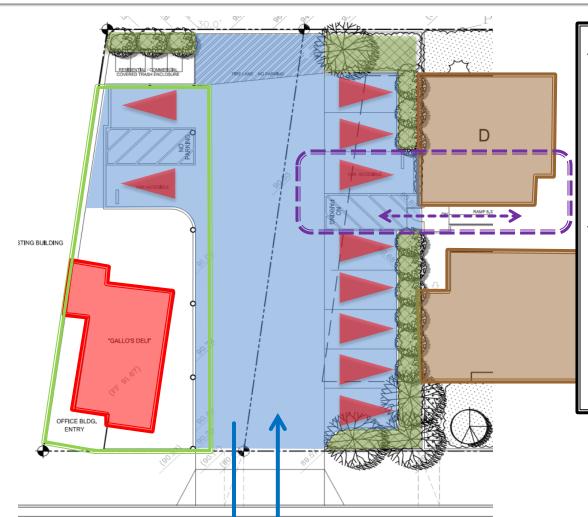
Users unrestricted

Issue:

Potential parking conflicts during day

PC Recommendation Commercial Parking Only





10 space commercial parking lot

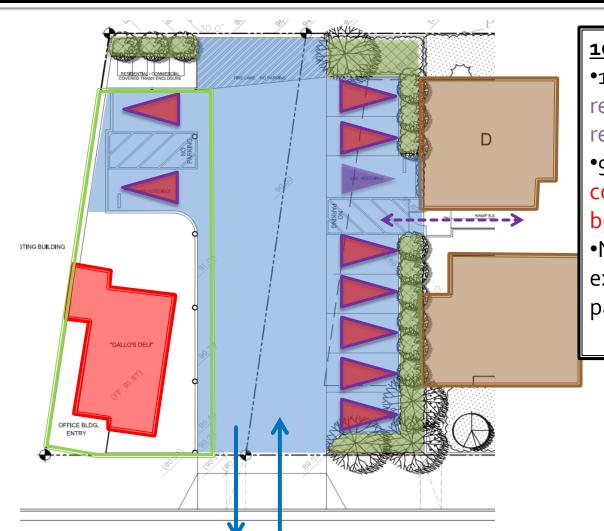
- •Requires waiver of 1 residential guest space
- •Restricted for commercial users during regular business hours

Issues:

- •Building Code requires van accessible residential guest space
- •Cannot be waived as designed
- •Relocation into basement would require significant redesign and addition of public elevator

Revised Staff Recommendation Restricted Share Use





10 space shared parking lot

- •1 van accessible space restricted at all times for residential use
- •9 spaces- restricted for commercial users during regular business hours (8am to 6pm)
- •No user restrictions 6pm to 8 am, except no commercial overnight parking

Architectural Design Northwest Perspective



Architectural Design Northeast Perspective



Retention of Gallo's During Construction

- Not needed to retain vested land use rights of Specialty Food Permit
- Intent is to maintain on-going client base
- Determined to be structurally feasible

Retention of Gallo's











For more information contact:

Jaime Murillo 949-644-3209 Junilla Green and Beaches gov www.newpo.charches.gov Makana Nova 949-644-3249 mnova (a) newportbeachca.gov www.newportbeachca.gov





The staff report is unclear as to what "negative impacts to the abutting property" are avoid by topping the excess-height retaining wall "with a 42-inch-high glass guardrail." I am guessing the planner has safety impacts in mind?

Page 17: In Section 1, statement 5 should say "2013" rather than "2012."

Page 18: The opening paragraph of Section 3 cites Municipal Code Section 20.28.040.I, whose title is "*Adjustment of development area boundary*." I find nothing in the Resolution that clearly defines what adjustment to the boundary is being approved or where the new boundary will be.

The illustration on page 30 of the agenda packet shows what it claims to be the current (Area "B")/(Area "C") boundary (apparently following the 68.09 foot height contour), and a somewhat arbitrary heavy line (having nothing to do with elevation contours) labeled "Predominant Line of Existing Development." I assume the intent of the Resolution is to move the "B/C" boundary for this one lot to that line, but I don't find that clearly stated.

In Fact B-1, the word "that" seems unwanted making the sentence ungrammatical, at least to me. I would suggest deleting it.

Page 19: Regarding Fact C-2, see previous comments. The proposed line is consistent with the existing line *only* when viewed from above. Also, *even* when viewed from above, the adjacent lot to the south (also in the ravine) does *not* appear to have developed out horizontally to this limit.

Page 19: In Fact I-1, the use of the word "unique" is confusing, making it sound like many (or all?) Irvine Terrace bluff-top properties have the same problem. I think you mean the topography of the project site is unique, in which case "to other bluff properties in Irvine Terrace" should be deleted. Alternatively you could delete "unique" and say the topography of the project site is different from (most) other bluff-top properties along Dolphin Terrace.

Page 22: In Fact K-2, the alternative would seem to be fill the area to the 13 foot below curb level elevation. I assume that would involve building a retaining wall parallel to Bayside Drive, would be detrimental to the stability of the existing slope, and would probably also require a modification permit.

Item No. 4 Plaza Corona del Mar (PA2010-061)

The following comments refer to the January 3, 2013 Staff Report, and the page references are to the handwritten numbers (or, equivalently, the pages in the 124 page PDF)

Although not relevant to the Commission's current decisions, one of my main concerns with this project, to echo those expressed by Dan Purcell in the minutes of the December 6, 2012 hearing (page 90), is the vacation, without any compensation to the City, of the public alley easement at the rear of the Gallo's Deli property. I have not researched the vacation in the 1990's of the much larger segment that wrapped around the rear of the entire plaza, and

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apparently connected to PCH, but the vacation of this last piece was presented to the City Council as Agenda Item 23 at its November 27, 2012 meeting. It was presented in the abstract as a useless piece of steeply sloping property that the adjacent private landowners could maintain better than the City, and the Public Works Department and Council seemed clueless that there were any imminent plans for its development. It was also asserted that, although the private owners would acquire additional development rights, all that was being vacated was a public transportation easement, and that the City had never owned the land "in fee." Yet it was shown on the City's online maps in the same manner as any other public streets and there was no indication the private property lines extended into it. The March 18, 2010 map on page 110 of the present staff report also suggests the unvacated alley segment behind Gallo's was never part of the private properties.

It was, then, quite surprising to see notices posted a couple of days later of the December 6, 2012 Planning Commission hearing on development of "Plaza Corona del Mar," and even more surprising to find in the agenda packet the Tentative Tract Map (page 111 of the present staff report) dated October 2012 (prior to any Council decision) showing the vacated City property as an accomplished fact integral to the development plans. Even if the City's only interest in the alley was, as the Public Works Director stated, an easement, its vacation clearly had value to the developer, and its transfer without compensation seems to me an improper gift of public funds.

At the very least, I would have thought the City Council should have been made fully aware of the proposed development and shown the plans and Tentative Tract Map before making its decision about the fate of the alley.

Page 1: The captioning information at the top of the first page of the staff report refers to a "Variance No. VA2012-002," as does the Resolution. Yet, as it did on December 6, 2012, the *Recommended Action* in the agenda, and on the 4th line from the bottom of page 1, refer to "Variance No. VA2012-007."

Although the second paragraph of the present report indicates it supplements the prior report, for those who have not followed this application closely, and even for those who have, it would seem helpful to provide a reference to where the previous report can be viewed, since much background information about what is being proposed for approval at this meeting is not included here, including the explanation of the revised Tentative Tract Map supplied separately, as a correction, after the previous report was issued (see comment regarding page 44, Condition 14, below).

Page 3: Alternative 3 seems to be describing three guest spaces in the underground garage (one van accessible *plus* two standard). Isn't that one more than the total of two the staff report says is required by the Zoning Code?

Page 4: Although it does not seem a condition of approval, the staff encouragement of painting each unit a different color would seem to me to produce a development with an excessively busy look. I would think a couple of colors, alternated, would be more pleasing.

Page 5: Regarding the possibility of redesigning/rebuilding the Gallo's Deli use, the first two paragraphs indicate that "preservation of the existing structure is not required" to maintain the rights enjoyed under Specialty Food Permit No. 38, and that "staff is not opposed to the construction of an entirely new structure." However it is not clear either resolution is intended to leave that option open. Condition of Approval 1 (handwritten pages 35 and 71) says the development has to "be in substantial conformance" with the submitted plans, which are presumably illustrating the proposed "steel frame superstructure with independent footings, columns and beams from the existing building."

Page 26: With regard to the need to grant a variance from the normal 20 foot setback, the Facts presented in support of Findings B and C really seem only to support Finding D (that approving the variance would not be a grant of a special privilege inconsistent with other properties in the vicinity). Some of the properties cited for comparison do not appear to have *identical* zoning classifications (a requirement of Finding B), nor, without knowing how the other properties obtained their more permissive standards, does it seem convincing that approval of the variance is necessary to preserve an existing property *right* (Finding C). The City would seem to lose its ability to impose zoning standards on particular properties if they can be overridden simply because different standards are observed elsewhere.

Page 27: [typo in last full line] "the commercial lots to the west which so do not have front setback requirements."

Page 30: [Finding C] As previously commented, beyond discharge of fill (dirt?), it seems possible the project could add undesired water/pollutant drainage into Buck Gully (cf. item 4 in the public comment letter on page 99). Conditions of approval 22, 24, 26 and 27 on page 37 (and #56 on page 41) appear intended to minimize some of that possibility, but it remains unclear how the development may alter the impact of rainwater runoff into the gully.

Page 33: [Fact J-2] "Chapter 14.24" appears, without saying so, to be a reference to the Newport Beach Municipal Code.

Page 36: Is the Condition 17 restriction of daytime parking to "commercial tenants" intended to prohibit Gallo's customers from using the 10 off-street spaces? That is, was the previous "and customers" language in Condition 10 intentionally deleted?

Page 37: Very minor typo in Condition 28: "the applicant shall prepare a photometric study."

Page 39: Condition 39 appears to be a standard one, but I'm not entirely sure what the second sentence is intended to do. First, is it supposed to read "Issues with regard to…" rather than "The issues with regard to …"? Second, does it mean the establishment is subject to AQMD regulations? Or that if complaints are received, the operator is supposed to refer them to the AQMD?

As a general comment, since the conditions of approval refer to five discretionary grants (UP2012-011, MD2012-011, SD2012-001, NT2012-001 and VA2012-002) affecting up to two properties and an existing use, it is frequently difficult to tell what conditions are intended to apply to what actions. For example, are Conditions 39 and 40 intended to apply only to the Deli

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use? Or to the entire commercial use? Or to the entire development, including the residential kitchens?

Regarding building across the existing property lines (in Condition 41), I am guessing that with regard to the retaining wall extending into what was previously an undeveloped City alley, the recording of the tract map requires completion of the vacation and adjustment of the property lines in that area, if any is required.

Page 40: [Condition 49] The last sentence is probably intended to read "As per Guideline G.02. tree species are not allowed..."

Page 43: It is unclear why the Tract Map Conditions are numbered separately from the others. In the draft resolution presented at the December 6, 2012 meeting, as in the previous sections, they simply continued the sequence.

Page 44: I have not seen an explanation of the significance of the existing public easements referred to in Conditions 10 and 11, at the east edge of the property, and what would be gained/lost by vacating and/or realigning them.

In Condition 14, the reference to the error regarding the 82-square-foot notched area on the Tract Map no longer seems relevant since the map provided on page 111 of the current agenda packet no longer shows it.

A final concern is whether proper ventilation of the underground parking garage is adequately addressed.

Note regarding pages 45ff: most of the comments regarding pages 10ff, above, apply equally to the Alternative Resolution starting on page 47.

Page 56: (Fact B-3) Although the parking lot crosses the proposed property lines, the Tentative Tract Map on page 111 suggests the stalls are entirely on the residential Lot 1. To those, like myself, unfamiliar with the rules governing Tract Maps, if the parking is to be used exclusively by the commercial uses, one wonders why the two lots are not being defined so that the entire parking area, including the stalls, is assigned to the commercial Lot 2. Then the only shared use would be the residents' right to use the shared trash enclosure on the commercial lot – which raises the question why the residential trash responsibilities aren't on the residential lot to start with.

Page 72: Condition 18, calling for the development of an agreement between the commercial and residential owners for use of the ground level parking lot seems incompatible with Condition 14, which restricts use of that lot to "commercial tenants and customers only."

Page 104: Staff appears to disagree with the architect's belief that the project is in the Coastal Zone and will require Coastal Commission approval. Considering its proximity to Buck Gully, my guess is the property may have been improperly excluded from the Coastal Zone when the maps were first drawn (or Buck Gully contained less of a stream, then).